

**The Politics of Grievance:
society and political controversies in New South Wales
1819 – 1827**

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A handwritten signature in black ink, appearing to read "M. C. Curran". The signature is fluid and cursive, with a long, sweeping underline.

For
Margaret Alison De Long



CONTENTS

Abstract p.vii

Abbreviations p.x

Introduction p.1

PART ONE: Vocabulary and Society p.7

Chapter One p.8

Exclusionists and confusionists

Chapter Two p.22

Colonial society – rank and inequality

PART TWO: Dividing society 1819 – 1821 p.44

Chapter Three p.45

Constitutional rights and limitations

Chapter Four p.69

Bullock v. Dodd in New South Wales

PART THREE: Governor Brisbane's legacy of division – 1825 p.87

Chapter Five p.88

Newspapers and authorship

Chapter Six p.112

The beginning of the Dinnerist Crisis

Chapter Seven p.126

Personal vituperation and constitutional reform

Chapter Eight p.143

The Governor's Dinner

PART FOUR: Governor Darling's Sydney 1825 –1826 p.162

Chapter Nine p.163

Expectations and the reality

Chapter Ten p.181
Family and government

Chapter Eleven p.193
Calls for violence and heavier chains

PART FIVE: The Sudds-Thompson Case in 1826 – 1827 p.206

Chapter Twelve p.207
Political friendships

Chapter Thirteen p.223
A Parade Ground ceremony

Chapter Fourteen p.252
The Case begins

Chapter Fifteen p.275
Political tensions, threatened impeachment

Chapter Sixteen p.302
Personal grievances and imperial arguments

PART SIX: Conclusion – The Lessons of Chronology p.332

Chapter Seventeen p.333
Chronology and grievance

APPENDICES p.342

Appendix One p.343
Act No. V, 7 Geo. IV.

Appendix Two p.345
'Quinque's' letter to the *Australian*, 2 December 1826

Appendix Three p.348
Henry Dumaresq to Edward Dumaresq, 23 December 1826

Appendix Four p.350
Extract from a speech by William Wentworth, 26 January 1827

Appendix Five p.351

Henry Dumaesq, 'Reflections suggested by the Address voted at the late Public Meeting in New South Wales and some Proceedings subsequent thereto', 6 November 1827

BIBLIOGRAPHY p.367

Abstract

This thesis studies three controversies of the time and place, namely the settler's petition of 1819 and the subsequent questioning of the legal status of emancipists, the Dinnerist Crisis of 1825, and the Sudds-Thompson Case in 1826 – 1827.

In background to the study stands a statement by Michael Roe, 'As settlement spread, the relative importance of the gaols declined and the penal method of government became inadequate. What new form of power was to take its place concerned all interests in the colonies'.¹ Although Roe was discussing the period 1835 to 1851 this concern with future power had long been present in the colony. In the period of this thesis that concern was expressed as a desire for the granting of constitutional reforms, particularly trial by jury and some form of representative government. When these demands were discussed the colony was troubled by a question, should the emancipated convicts be allowed to participate in these boons if they were granted? While following these political concerns, the individuals placed in the foreground of this study are examined and an attempt is made to delineate the personal within their public actions. Some of the familiar building blocks of colonial history are re-examined, and the claims are made that there were no 'exclusives', William Wentworth was not the author of a book

¹ Michael Roe, *Quest for Authority in Eastern Australia 1835 – 1851*, Parkville: Melbourne University Press, 1965, p.1.

which appeared over his name, and Laurence Hynes Halloran caused the Sudds-Thompson Case.

The three clashes studied in this thesis occurred under the administration of different governors, Macquarie, Brisbane and Darling. They took place without, and with, a free press. Not all the same protagonists were involved in each dispute. The first two incidents appear to have common political aims, while the third protested against a parade ground ceremony and the death of a soldier. The law courts, public dinners, and iron collars served as occasions for colonial conflict and political manoeuvring. Each event was political, and personal.

In 1819 an élite, a blended group of emancipated convicts and free emigrants, organized a widely supported settler petition. At the head of a wish list of commercial reforms they placed a plea for the introduction of trial by jury – whether the emancipated convicts were to take part was not clearly represented. Shortly afterwards, and as Commissioner Bigge was conducting his Inquiry for the Colonial Office, the legal rights of the freed convicts were disturbed as the implications of a London trial, *Bullock v. Dodd*, spread to the colony.

The ‘dinnerist crisis’ of 1825 occurred around the trivial matter of Governor Brisbane’s departure from Sydney. A dinner organized to farewell him developed into a confrontation between factions. Then, at the end of 1826, the Darling government became enmeshed in the disastrous Sudds-Thompson Case.

The thesis is largely drawn from an examination of primary sources, and suggests different perspectives and parameters for the study of colonial society.

Throughout, it is argued that much of the accepted historiography is inaccurate, partial, and often based on confused chronology. Attention is particularly drawn to the increasing role of the newspapers, and their powers of choosing matters to dispute, their ability to sustain and direct argumentation, and their questionable legacy as historical sources. Also, two men, Edward Eagar and Laurence Halloran, are brought forward and examined for their contributions to the confrontations which marked the period 1819 – 1827. As its title suggests, 'The Politics of Grievance' highlights the personal resentments which underpinned the public face of progressive colonial politicking.

FOOTNOTE ABBREVIATIONS

AONSW Archives Office of New South Wales

AOT NS Archives Office of Tasmania, Non-State papers

CO Colonial Office

HRA Historical Records of Australia

JRAHS Journal of the Royal Australian Historical Society

ML Mitchell Library

INTRODUCTION

Introduction

'l'histoire, c'est le temps' Michelet¹

Two sentences on the first page of Michael Roe's *Quest for Authority in Eastern Australia 1835 – 1851* suggest the political boundaries of this study, 'As settlement spread, the relative importance of the gaols declined and the penal method of government became inadequate. What new form of power was to take its place concerned all interests in the colonies'.² This thesis deals with some of the uncomfortable workings out of that process in New South Wales, in three episodes from 1819 until early 1827. Across this period not all were convinced that a collectivist and punitive administration was inadequate for governing the colony, and when the possibility of some concessions was admitted the forms these future changes would take were contested. The claims around these matters were sometimes put in colonial terms, sometimes posed as imperial arguments, and usually expressed in language of grievance.

In 1819 an élite, a blended group of emancipated convicts and free emigrants, organized a widely supported settler petition. At the head of a wish list of commercial reforms they placed a plea for the introduction of trial by jury. The few opponents were against the timing, and the composition of the institution, but not its substance. In Britain, these rights were withheld from the young colony. The colonists who supported change tended to obscure, in their public statements, the penal nature of the colony. Those who opposed these measures were 'blinded by the convict atmosphere of the place.'³ Later that year the colony was subjected to a Colonial Office inquiry conducted by Commissioner Bigge, as it was taking place the legal rights of the freed convicts, a majority of the settler

¹ Emphasis as in original: Jules Michelet, *Histoire de la Révolution française*, tome I (Paris, 1961 [1847 - 1853]) p.291.

² Michael Roe, *Quest for Authority in Eastern Australia 1835 – 1851* (Parkville, 1965), p.1.

³ Field to Marsden, 18 May 1825, ML A 1992 Marsden Papers, p.442.

population, were found not to be as secure as had been assumed. These events brought forward political arguments, and personal grievances. John Thomas Bigge was an influential, and not impartial observer. Playing to an audience of one the colonists squabbled amongst themselves, and attempted to influence his Inquiry. After his Reports were published they formed a context for heated discussions into the present nature of the colony and its future.

The 'dinnerist crisis' of 1825 occurred around the trivial matter of Governor Brisbane's departure from Sydney. A proposed dinner to farewell him developed into a confrontation between factions. At first I thought of the events of 1825 as the 'dinnerist *controversy*'. 'Dinnerist' was taken from Chief Justice Francis Forbes's correspondence, and controversy was my own addition. However, when Governor Darling wrote to the Colonial Office about these events, which occurred before he arrived in New South Wales, he used the word crisis. As in other matters, Darling was right. Neither Forbes nor Darling would have appreciated the propinquity, but for this thesis I brought the two together, and coined the phrase 'dinnerist crisis'.

At the end of 1826 the *Australian* newspaper led an attack upon Governor Darling for his treatment of two private soldiers, Joseph Sudds and Patrick Thompson, and the death of the former. After the two men had been convicted of a theft, carried out to escape from their regiment, Darling used a local Act to change their lower court sentences. Then, in order to hold them up as an example to their fellow soldiers, he invented a ceremony involving chains, iron collars, and the performance of the Rogues March. Everything went wrong when Sudds died. The Governor was surprised and confused by the *Australian's* virulent criticisms of his actions, seeing both personal and political reasons for the assault. That year his new government had begun the radical, and desirable, reconstruction of the public service. Ralph Darling was an experienced military bureaucrat, possessing determination, ability and commonsense, and had been a utilitarian choice for directing a colony in transformation. His powers, moderated by Legislative and

Executive Councils, were more limited than his predecessors. The free press, introduced during the preceding regime and permitted to operate with less control than in Britain, allowed oppositionist editors to subject his administration to more criticism than that permitted by any previous government. Ceremony appealed to Darling, and from the beginning he made some criminal punishments into public rituals to discourage crime. Before Sudds and Thompson, the newspaper which censured the Governor for brutality had urged the use of harsh, and illegal, methods towards convicts, bushrangers, and aboriginals. As the case developed Darling was made aware of the powers of the new free press to choose political battlefronts, and their ability to threaten public and personal reputations.

The three clashes studied in this thesis occurred under the administration of different governors, Macquarie, Brisbane and Darling. They took place without, and with, a free press. Not all the same protagonists were involved in each dispute. The first two incidents appear to have common political aims, while the third protested against a parade ground ceremony and the death of a soldier. The law courts, public dinners, and iron collars served as occasions for personal conflict and political manoeuvring.

Each event was political, and personal. Across the period restless men of property, with political appetites unsatisfied by an invitation to Government House, and ambitions which went further than appointment as a magistrate, acted to bring about constitutional change or question the authority of the Governor. As the political barricades were manned, personal complaints added bitterness to the struggles. Noting the crises which marked Macquarie's long period of office, Dr. John J. Eddy diverted attention from personal animosities by speculating that '[t]his was not through sheer factiousness, but endemic to the system of power relationships inevitable in an "autocracy".'⁴ Quarrelsomeness in the colonies was endemic, and influential in influencing political actions after the autocratic rule

⁴ In making his analysis Eddy acknowledges the work of Professor McMinn in *A Constitutional History of Australia*: John J. Eddy, 'Empire and Politics' in James Broadbent, Joy Hughes (editors), *The Age of Macquarie*, (Carlton, 1992), p.38.

Macquarie enjoyed had been moderated. Contemporaries saw the fighting men, historians have tended to throw sometimes ill fitting theoretical frameworks over the acrimony. In this thesis the frontiers between colonial Whig liberals and colonial Tory conservatives are observed, but 'factiousness' and grievance are moved to the foreground.

Grievance is defined as 'a real or imaginary wrong causing resentment and regarded as grounds for complaint', 'a feeling of resentment or injustice at having been unfairly treated'⁵, 'the infliction of a wrong or hardship on a person; injury; oppression; a cause or source of injury', 'the state or fact of being oppressed; trouble, distress, suffering, pain', 'a circumstance or state of things which is felt to be oppressive. In modern use, a wrong or hardship (real or supposed) which is considered a legitimate ground of complaint; something to complain of'.⁶ The emancipist merchant Simeon Lord described that touchy polemicist Laurence Halloran as 'irritable'. Halloran, confidence trickster, forger and convict, belonged to the argumentative, factious, disputatious élite of the period. Irritable is a suitable word for describing the sentiment which aggravated personal relations in the small settler community. Why were the colonists so disagreeable towards each other? Where did the sentiments of grievance spring from? Lionel Trilling pointed to an alluring but impossible goal for historians, 'The great novelists knew that manners indicate the largest intentions of men's souls as well as the smallest and they are perpetually concerned to catch the meaning of every dim implicit hint.'⁷ The Commissariat officer George Boyes, newly arrived in Hobart, examined the face of his superior Lieutenant-Governor George Arthur, 'he smiles and appears good humoured – whatever he may be in reality – I shall find him out in time'.⁸ Political aspirations themselves were expressed in terms of grievance.

⁵ *Collins English Dictionary*.

⁶ *Oxford English Dictionary*.

⁷ Lionel Trilling, *The Liberal Imagination* (London, 1964 [1950]), p.211 – 212.

⁸ Peter Chapman, editor, *The Diaries and Letters of G.T.W.B. Boyes: volume 1 1820 – 1832* (Melbourne, 1985), p.269.

The social experiment which established Australia seeded confrontationist politics into men's affairs.⁹ In 1819 - 1827 New South Wales was somewhere between a penal colony and a free colony: it always was. Commissioner Bigge observed the tension, 'the penal as well as the colonial objects of the establishment of New South Wales had always been in a state of conflict as soon as ever the necessities and privations [sic] that first accompanied it had ceased or diminished.'¹⁰ From the beginning the nascent polity was marked by fervour, and aggression – surprisingly often nurtured by men who were, or had been, advocates, barristers, and judges.

The period of this thesis holds a strange, and yet familiar society. In coming into contact with it attention has been paid to certain anachronisms which, if these arguments are accepted, suggest that historical considerations of the period based on a conflict between 'exclusives' and emancipists are flawed. The writer has attempted to observe chronological sequence, to note contradictory evidence, and indicate contemporary context.¹¹ Much of the historiography of the period is challenged and different perspectives and parameters are offered. In so doing the monolithic concept of 'emancipists' is fractured, attention is directed to the work of Edward Eagar and Laurence Hynes Halloran, and some matters are offered suggesting a re-appraisal of the career, and literary talents, of William Charles Wentworth.

⁹ To write only of a 'penal' experiment seems too constricting to describe the settlement of Australia in that scientific age.

¹⁰ *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, p.154.

¹¹ These are the 'rules of proper historical method' noted by Graeme Davison. Their 'abrogation', he asserts, result in 'the abuse of history': Graeme Davison, *The Use and Abuse of Australian History* (St. Leonards, 2000), p.242.

PART ONE

Vocabulary and Society

Chapter One

exclusionists and confusionists

Once upon a time, early colonial political history was easy history. It was dramatic, and morally uplifting. Two forces opposed each other – while somewhere off centre the aboriginal population was dying of disease and mistreatment. On one side of a settler conflict were the snobbish and hierarchical ‘exclusives’, on the other the lower class and politically sound ‘emancipists’. One selfishly sought to conserve and add to their granted estates, and exclude the ex-convicts who surrounded them from any share in power. The ‘exclusives’ were losers, and despite the drama of the conflict, the victory of liberalism was so predictable that a certain boredom entered the pages. It was a relief for some historians when gold was discovered, and real history began.

Then, late twentieth century academics sought more than convict chains, yellow metal, and old left interpretations.¹ Convict protest, gender relations, ethnographic history, massacres, postmodern anthropology, masculinism, otherness, textual analysis, theories of language, environmentalism, queer history, and other herstories/histories became fashionable. But often the building blocks for the new interpretations were taken from, the now despised, earlier narrative histories. In spite of a professed distaste for the old stories², it was assumed that basic elements of the older chronicles were correct.

Until 1822 there were no ‘emancipists’ in New South Wales or Van Diemen’s Land. From Phillip’s time the verb emancipate described the freeing of

¹ In 1979 Rob Pascoe was able to neatly classify the older historians within eight ‘schools or tendencies’: Pascoe, Rob, *The Manufacture of Australian History* (Melbourne, 1979), pp.4 – 5.

² ‘How did Australian historians get it so wrong?’ asked Stephen Nicholas at the end of a 1988 study of convictism. Nicholas, Stephen, ‘A New Past’ in *Convict Workers: Reinterpreting Australia’s past*, edited by Stephen Nicholas (Cambridge, 1988), p.199.

‘On frighteningly subjective evidence, too many historians demonstrated an overwhelming desire to judge these convicts as good or bad, leading to a profound misconception of who the convict women were. These findings underscored much subsequent historiography, arguably distorting it.’ Deborah Oxley, *Convict Maids: The forced migration of women to Australia* (Cambridge, 1996), p.233.

convicts.³ It evolved into an adjective form, 'emancipated convicts', but not into the noun used by historians. Commissioner John Thomas Bigge conducted a Colonial Office inquiry into the colony from September 1819 to March 1821. Sensitive to language use, and its manipulation, he used the phrase 'emancipated convicts' in his first Report (published June 1822), and drew attention to the efforts of the ex-prisoner Edward Eagar, and others, to mark a distinction in their status by 'styling themselves emancipated colonists'.⁴ His Report stimulated further language change. Responding to it, in a letter to the Colonial Secretary Earl Bathurst in November, Edward Eagar introduced the word 'emancipist'.⁵ It was an impeccably imperialist word, for it was thought up in London to name people in New South Wales. It was practical, and deliberately imprecise. Its meaning was immediately obvious. Yet it camouflaged actual distinctions⁶ because it was used to describe all ex-prisoners, whether liberated because their period of imprisonment had expired or because they had received absolute or conditional pardons – the latter gave their holders freedom in New South Wales but did not allow them to return to Britain until the end of their sentence. Bigge demonstrated its usefulness. In replying to Eagar's criticisms he used it, and only later drew attention to its newness and its inventor: 'the Class of those termed Emancipists by Mr Eagar'.⁷

The new word encouraged observers to talk, and think, of the freed convicts as one block of persons, to whom misleadingly simple single motives, such as egalitarianism or an *esprit de corps*⁸, were attributable. Contrary evidence, such as the comments of sheriff John Mackaness that mistreatment of the convicts by the government and the emancipists was one of the main reasons for creating

³ Phillip to Grenville, 5 March 1791, *Historical Records of Australia*, series I, volume I, p.251.

⁴ *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales* 19 June 1822, p.135.

⁵ Eagar to Bathurst, 6 November 1822, CO 201/111.

⁶ This point was made by Edward Eagar writing to Earl Bathurst. John Ritchie, editor, *The Evidence to the Bigge Reports: New South Wales under Governor Macquarie*, volume 2 (Melbourne, 1971), p212.

⁷ Ritchie, *Evidence to the Bigge Reports*, volume 2, pp.265 and 266.

⁸ John Dunmore Lang, *Reminiscences of my Life and Times*, edited by D.W.A. Baker (Melbourne, 1972), p.107.

bushrangers, was easily overlooked.⁹ *The Oxford Companion to Australian History* illustrates the danger: 'Emancipists demonstrated considerable solidarity, particularly in their disdain of exclusives.' How they demonstrated this combination of contempt, scorn and superiority, is not suggested. Of the many settlers who had once been convicts little is known of the attitudes they held to any of the subjects which interest historians.

From 1819 settlers campaigned for legal and political reforms, and Michael Roe's stricture is apt: 'Attitudes to broader constitutional issues also require study, despite the danger of attributing to the whole class the opinions of a few articulate spokesmen.'¹⁰ The word emancipist is dangerous, for it makes it easy to think of the freed convicts as one block of persons, where shadowy individuals are submerged within the perceived interests of the group. If the *Oxford Companion to Australian History* were correct, and the emancipists possessed 'considerable solidarity', then the contemporary concerns of those who opposed constitutional reform because a future representative assembly could be taken over by ex-convicts were the more valid. Given the religiosity and the morality of the time, if emancipists possessed any solidarity of feeling, it was a shared sense of shame.¹¹

In 1823 Eagar turned out a further variation by making the phrase 'Emancipist Classes'¹², this last phrase suggesting the real divisions which existed between the ex-convicts.

Before the 'exclusives' came the 'exclusionists'. The naval surgeon Peter Cunningham was present in New South Wales during the polarising dinnerist crisis of late 1825. Several years later his book on the colony indicated the divisions between some emigrants and some emancipists, and gave names to them:

⁹ Marc Serge Rivière, translator and editor, *The Governor's Noble Guest: Hyacinthe de Bougainville's account of Port Jackson, 1825* (Carlton South, 1999), p.42.

¹⁰ Roe, *Quest for Authority*, p.42.

¹¹ See in example Chapter 4, 'The shame of Botany Bay', in J.B. Hirst, *Convict Society and its Enemies* (Sydney, 1983), pp.189 – 217.

¹² Eagar to Bathurst, 3 April 1823, *HRA*, series IV, volume I, p.462.

It is between parties of these two classes, that there has been so much bickering. One subdivision of the emigrant class alluded to, is termed the *exclusionist* party, from their strict exclusion of the emancipists from their society; while again, a subdivision of emancipists is denominated the *confusionist* party, from their endeavouring to embroil society, as *the others* say.¹³

Cunningham signed a petition circulated by John Macarthur at the time of this 'bickering', and he may have been more involved in colonial politics than his account recognizes.¹⁴

Cunningham's word 'confusionist' is more than an amusing aside. Perhaps a joke he was introducing in his book, it may have been used in conversations in Sydney and Parramatta. If it was in current circulation it doesn't appear in contemporary newspapers, to whose editors it was applicable, but it does describe the activities of some colonists - through the eyes of their opponents. Exclusionist was used by contemporaries, for a time, but confusionist was not taken up, and does not appear in any dictionary. For both words, exclusionist and confusionist, Cunningham was careful to point out that they described only some of the free settlers and ex-convicts. Confusionist, or another word, would be useful in attempting to delineate this politically active 'subdivision of emancipists', thus making explicit that reference is being made only to part of a larger grouping.

Edward E. Morris's *Austral English: A Dictionary of Australasian Words, Phrases and Usages* of 1898 gave no entry for exclusive, but included exclusionist as a noun and adjective, and gave Cunningham's 1827 usage in definition. An earlier example of exclusionist was found by the *Australian National Dictionary* in the *Monitor*, 30 June 1826: 'We rejoice that the impotent folks, yclept "The Exclusionists", are not the only persons who can live in the style and adopt the manners of gentlemen.' However, exclusionist first appeared in a speech by

¹³ Cunningham, Peter, *Two Years in New South Wales; a series of letters, comprising sketches of the actual state of society in that Colony; of its peculiar advantages to emigrants; of its topography, natural history, &c, &c.*, volume II (London, 1827), pp.118 - 119.

¹⁴ John Macarthur, CO 201/179.

William Wentworth, during the dinnerist crisis, and was reported in the *Sydney Gazette* on 27 October 1825.¹⁵

Exclusive must mean something, but opinion is divided. The historian A.C.V. Melbourne suggested that 'Those who were associated with government stood aloof from all the others, only an occasional free settler was admitted to their select society, and their attitude towards all other people led to the application of the term "exclusives".'¹⁶ The *Australian Oxford Dictionary* defines exclusive as 'a term used in New South Wales in the 1820s and 1830s to describe a member of the higher ranks of landowners, merchants, and officials, who, with few exceptions, opposed constitutional reform.'¹⁷ It wasn't, they didn't. The *Macquarie* dictionary in offering an Australian historical definition ignores the sense of social exclusion to which it has been applied by historians, and only allows it a political reading: 'a person who was opposed to giving full civil rights to emancipists.' One historian has claimed it was a 'nickname' given to the free settlers, while another suggests it means the 'capitalist class in N.S.W.'¹⁸ The *Oxford Companion to Australian History* offers a compendium of misinformation:

a derogatory term applied in the 1820s and 1830s to those of high social status in NSW: the members of the Legislative Council, magistrates, clergy, landholders, merchants and other wealthy free settlers. They resisted measures that would undermine their privileges; in particular they opposed reforms that would give the emancipists legal and political equality. The exclusives were favoured by Governor Darling, but actively lobbied the British administration and parliament to protect their status. Their critics included W.C. Wentworth, who chided them as "the yellow snakes of the colony."¹⁹

Exclusive was never used, in the above senses, in the 1820s. It first appeared in print, in a disparaging sense, in 1836. The idea of a political contest between

¹⁵ *Sydney Gazette*, 27 October 1825.

¹⁶ A.C. V. Melbourne, *Early Constitutional Development in Australia* (St. Lucia, 1963 [1934]), p.59

¹⁷ *Australian Oxford Dictionary*, edited by Bruce Moore (South Melbourne, 1999).

¹⁸ Douglas Pike, *Australia: The Quiet Continent* (London, 1966 [1962]), p.58;

J.M. Bennett (editor), *Some Papers of Sir Francis Forbes* (Sydney, 1998), p.274.

¹⁹ Graeme Davison et al, *The Oxford Companion to Australian History* (Melbourne, 1998), p.230. A similar erroneous claim is made in the *Australian Dictionary of Biography*. See article 'William Wentworth' by Michael Persse in *Australian Dictionary of Biography*, volume II, p.585.

'exclusives' and emancipists is a simple and ugly distortion. In adversarial readings of colonial history these two Very Big Generalisations skirmish across the pages. The differences in the campaigns for judicial and political reforms over the two decades should not be plaited together and seen as a simplistic conflict over 'privileges' between ex-convicts and top-drawer society. William Charles Wentworth, himself a holder of high social status, did not call the 'exclusives' 'the yellow snakes of the colony.'²⁰

Exclusive was first used, as an attractive piece of invective, in John Dunmore Lang's newspaper the *Colonist* in January 1836: 'Our *Pure Merino*, our *Exclusive* contemporaries who have been abusing the Governor.'²¹ As a simile for 'pure merino' it delineated some people of high social standing – one strand or group of the upper rank. It was not a broad metaphor for the entire upper class. If it meant people who discriminated against the emancipists, Lang himself would have been in this category. If it meant those who opposed the inclusion of emancipists on juries and as electors for a representative government then Lang, who opposed emancipists as jurymen but would have allowed them the franchise, was amongst those being designated. Whoever was meant, they were people of whom Reverend Lang disapproved.

There is no evidence that this first published usage led to contemporary adoption of the word exclusive. The word's overlong and misleading existence took some time to begin, for unlike emancipist, exclusive did not fill a contemporary descriptive need. When asked at the Molesworth Commission in London in 1837 how the leaders of the 'settler party' described themselves James Mudie answered, in language reminiscent of earlier years, 'they call themselves the ancients'.²² Lang's later manuscript, published as *Reminiscences of my Life and Times*, does not use the word. In looking back to 1835, Lang found no need to use

²⁰ This is discussed in Chapter Seven.

²¹ *Colonist*, 28 January 1836.

²² Evidence of James Mudie, 5 May 1837, *Report from the Select Committee on Transportation*, 14 July 1837, p. 110.

the word his newspaper had pushed forward in describing society, 'The population of the colony at this period consisted exclusively of two classes of persons, respectively designated Free Emigrants and Emancipists'.²³

Exclusive has come to mean whatever the historian wishes it to mean, and whoever he wishes it to name. In one place it means people who didn't mix socially with emancipated convicts, in another those involved in political disputes to whom elitist ideological standpoints are attributed. At first it was an amusing word designating a particular group, known immediately to the readers. Later it was applied to the entire colonial upper rank, and weighted with moral righteousness – moral superiority lying with the emancipists and the historians using the term. An exact contemporary shaft became an inexact historian's distinction. The imprecision appears when it is asked if all those it is intended to designate held the same political and social viewpoints. Taking one element, an attitude towards emancipists, and saying that all those who felt in this way shared similar social rank and political ideology produces a distorted caricature.²⁴ Exclusive obscures the people and the issues it should be clarifying, and simplifies the personalities and social forces within a complex society. The modern social order is comparatively simplistic. Colonial society was a flux of political thought, where support of a British political party did not mean the acceptance of a rigid catechism of ideas and ideals.

Historians dealing with the personality, and career, of William Charles Wentworth have not always been successful.²⁵ In 1819 William Wentworth published, in London, the first book written by a colonial-born. It was a statistical and historical account of the colony, with essays on history, government,

²³ Lang, *Reminiscences*, p.106.

²⁴ 'The majority of their [the emancipist's] "exclusive" opponents looked to England for retirement; but Australia was home to the emancipists': Paul Edwin LeRoy, 'The Emancipists, Edward Eagar and the Struggle for Civil Liberties' in *Journal of the Royal Australian Historical Society*, volume 48, part 4, August 1962, p.270.

²⁵ Throughout this thesis it is argued that the representations of William Wentworth by A.C.V. Melbourne, Manning Clark, and more recently John Ritchie, are flawed. A completely erroneous suggestion of Wentworth's character is to be found in his biographical entry in the *Oxford Companion to Australian History* which calls him 'a man of the people'.

administration and proposals for change. Large portions of the book were cribbed from other authors, and his text was marked by jobbery, for he hoped its publication would gain him either a seat in a future Legislative Council, or the position of Colonial Secretary.²⁶ Wentworth's constitutional and administrative desideratum were similar to those being asked for in Sydney. He had few original political ideas, and his support of these themes suggests he knew of political discussion at home. Wentworth's arguments presented dark-side opponents, whom he ironically depicted as an 'aristocratic body' opposed to those who had 'been subject to the lash of the law.'²⁷ The words were not meant to be taken seriously, for his own upper-ranking emancipist friends had not found their periods of convictism quite so dramatic. His opponents he depicted as a 'faction', 'they deserve no milder appellation' commented Wentworth, and an 'aristocratic junta'.²⁸ With the patrician links of his own family, and knowledge of his enemies' baser connections, it was a snobbish putdown of fellow colonists with whom he had quarrelled.

In 1824, as Wentworth was sailing towards Sydney, a very different third edition of his book (which he may not have written²⁹) was published. Again a small group of settlers opposed to the freed convicts was delineated, and abused for their supposed pretensions: '[They] kept as much aloof from the emancipists as from the convicts themselves, enduring no association with them except for purposes of mere interest or convenience.'³⁰ This use of emancipist in a popular book on New South Wales speeded up the word's general adoption. The status

²⁶ William Wentworth to D'Arcy Wentworth, claiming that his book would procure him a seat on any new colonial legislature, 25 May 1818, ML A756.

²⁷ W.C. Wentworth, *Statistical, Historical, and Political Description of the Colony of New South Wales and Its Independent Settlements in Van Diemen's Land with a Particular Enumeration of the Advantages which these Colonies Offer for Emigration, and the Superiority in many Respects over those Possessed by the United States of America* (London, 1819), p.346.

²⁸ Wentworth, *Statistical, Historical, and Political Description* (1819), pp.346 – 347.

²⁹ The authorship of *Australasia* and the third edition of Wentworth's book is discussed in Chapter Five.

³⁰ W.C. Wentworth, *A Statistical Account of the British Settlements of Australasia; including the colonies of New South Wales and Van Diemen's Land: with an enumeration of the advantages which they offer to emigrants, as well with reference to each other, as to the United States of America and the Canadas; and directions and advice to emigrants* volume I, (London, 1824 edition), p.381.

abuse of the first edition was re-used: 'Faction', an 'aristocratic junta' and the 'aristocratic party.'³¹ In both books the invective was intended for a particular, small, wealthy clique with considerable British influence; the abuse was never meant for the entire upper class. Although not named, the enemies were John Macarthur, his family and their circle.

Within the colonial upper classes were various trends of political thought. Boxing them as a reactionary mass called the exclusives denies that variety. Amongst them were many of the most active men supporting moves for the extension of British institutions to the colony, and those opposed to this cause. They were individuals, acting in the usual unpredictable ways.

In 1788 there were convicts and the free. In time the convicts themselves became free, yet it was hard to forget the original distinctions which had existed between them and their one-time gaolers. As business and commercial contacts brought them together, social links were modified to deal with the problem. Connections always existed between both groups. Patron-client relations were established. Informal sexual contacts, and formal marital contracts, made mixed bedfellows, while even simple friendships crossed the barricades. In 1823 Edward Eagar, for his own reasons, played down the social division between emancipists and settlers which Bigge had drawn attention to in his Reports. Eagar claimed the conflict had 'been much, very much misrepresented and exaggerated.'³² For the men who wished to establish English constitutional institutions in New South Wales it was necessary to convince the Colonial Office that the colony was just a transposed piece of the motherland. Their opponents pointed to the gaol origins, and that a majority of the free settlers had been transported as convicts. Bigge reported on a colony divided; Eagar, whose courtroom battles supported Bigge's thesis, argued otherwise.

³¹ Wentworth, *A Statistical Account*, volume I (1824 edition), 'faction' p.383; 'aristocratic junta' p.382; 'aristocratic party' p.391.

³² Eagar to Bathurst, 3 April 1823, *HRA*, series IV, volume I, p.469.

Most convicts were low-class Britons and regaining freedom allowed them, more or less, to squeeze into the colonial ranking system at much the same levels they originally occupied or even, if they had made good, at a higher level. Given their numerical strength over the lower-class free immigrants it was not a problem. Difficulties arose with the reintegration of those who had been gentlemen (was a lady ever transported?), or those who had seriously profited from the adventure offered by transportation to enrich themselves. The claims of those who had gained from being in New South Wales, and had attained financial importance, posed a social problem when Governor Macquarie brought a few of them into Government House society, and placed them in high status government positions. Critics saw him coercing the military, and free-emigrant society, and encouraging undeserving favourites by elevating them to the magistracy and making honourable places for them around his own dining table. Opponents objected both to their past crimes, and their present immorality. The Governor's forcible blending was resisted, not for restoring men to the positions held before their fall but for elevating them. Was vice triumphing over virtue or was he pragmatically recognizing that the emancipists had paid for their crimes and were being forgiven? In daily life the matter could be insignificant. It became a difficulty and was resented, as Bigge reported, when the governor pushed the two groups together. It was a problem of dinner tables and the officers' mess. Despite the emotions raised, and the sheets of complaints and justifications it generated, the matter was trivial with only a handful of men (out of the thousands of emancipated convicts), benefiting from the Governor's social engineering. Yet somewhere in the background other questions were raised. Whose colony was it? Did New South Wales 'belong' to the free emigrants, or the ex-convicts?

Outside Government House free settlers were prepared to do business with the emancipated convicts, to read their writings, even to be doctored by them and have, while they were able to practice, their support in the law courts. Sharing dinner tables made the hackles rise. Not surprisingly, some settlers had no

intention of inviting ex-convicts into their family circles. In the military world the presence of the ex-convicts offended the gentlemanly code. The claim by John Hirst that in most instances rich emancipists had, because of their power, to be treated by free settlers as respectable is true, but the qualifying 'most instances' covers a range of disqualifications.³³ If there was always room near the top for moneyed men there was also, according to Alexander Macleay's daughter Frances (Fanny), a place for ladies against whom everyone might speak, 'But they are *pretty* and *rich* & that is enough with some folks.'³⁴

The new newspapers, which began appearing after 1824, determined the political agenda and represented their opinions as public opinion. They used disputation to entertain their readers, and to encourage political change. It seemed that the colony had always been a feisty and antagonistic corner of the empire. Baron Hyacinthe de Bougainville made his second visit to Sydney in 1825, and when his account of the voyage was published in 1837 his French readers found a familiar picture of the rumbustious colonists. At the heart of the problems he placed the social conflicts between the released prisoners and the free. His analysis echoes earlier accounts. Was it what he saw, what he was told by the people with whom he mixed, or was it the result of careful study in France?:

The settlers are reportedly difficult to govern, and it is not an easy task to force them to live in harmony nor to promote unity among a people with such diverse and conflicting interests. New South Wales is no more fortunate in this respect than the colonies in India and the Americas; here it is not racial differences nor conflicts between rival castes that undermine the stability of the society and fuel hatred. Rather, dissension has been fostered by other factors and is the inevitable result of the very principle that was at the heart of the colonisation of Botany Bay.³⁵

The analysis is so familiar that it is worth querying. De Bougainville's careful research informs his published narrative. When he came to write, he recounted

³³ J.B. Hirst, 'Or None of the Above' in *Historical Studies*, October 1987, p. 521.

³⁴ 25 March 1827: Beverley Earnshaw, Joy Hughes editors, *Fanny to William: The Letters of Frances Leonora Macleay 1812 – 1836* (Sydney, 1993), p. 77.

³⁵ Rivière, *The Governor's Noble Guest*, p. 155.

his experiences through a range of published works. In his text he acknowledges the books of Hunter, Collins, Oxley, Flinders, Wentworth - 'but my attention was especially drawn to the voluminous report of commissioner Bigge.' He cautions his readers about the Reports, and in doing so reflects contemporary criticisms made against Bigge: 'there is no other work against which one ought to be more on one's guard for a number of reasons'.³⁶ Yet he accepts much of Bigge. In 1837, in a foreign country and a foreign language, the authorised version of the colony's history was again being expressed. The great divide was between emancipists and the rest.

De Bougainville had been in Port Jackson in 1802. The Sydney he saw in 1825 was a very different place. The social structure of the earlier prison settlement had been transformed. In M.H. Ellis's biography of John Macarthur the author uses his subject to make a contrast between the way things had been in the beginning, and what they were becoming. In doing so, Ellis stresses not the division but the comparative unity:

[Macarthur] still felt the native hatred and contempt for the criminal which characterised the old hand of the first decade of the Colony's history and which mostly had died out as a result of the very nature of colonial life, which imposed the need for a large tolerance towards one's neighbour, if one wished to be reasonably happy in Botany Bay.³⁷

The place of emancipated convicts is confusing because there was not one society – society was not a single drawing room from which ex-convicts were barred. Some wealthy emancipists would never have been part, or sought to be part, of the upper levels: they were not gentlemen, and they were in trade. There were also wealthy free settlers who neither sought nor shared high social status. It was an Australian situation which was similar to the normal standards of English and colonial society. Yet it was different, because those societies were little concerned with the unique New South Wales and Van Diemen's Land problem of

³⁶ *Ibid.*, p.166.

³⁷ M.H. Ellis, *John Macarthur* (Sydney, 1978 [1955]), p.471.

the social and civil liberties of wealthy ex-criminals, or convicted gentlemen. Those who had fallen far from grace and sought to be reintegrated to their previous positions were few. Their crimes and punishment severed their contacts. The first novel written and published in Australia, by Henry Savery a gentleman convict, drew on his own experiences: 'Society he could not keep, because to that alone, of which he had always been a member, he could no longer be admitted; and to no other, could he bring himself to belong.'³⁸ The novel may have been written in the past tense but at the time of writing Savery was still a prisoner.

After imprisonment came the question of where in society the ex-prisoner was to take his social place. The integration of emancipated women, or the daughters of convicts, which could take place through business success or marriage was resolved within the 'private sphere'.³⁹ Edward Eagar, who found the Wesleyan God in the condemned cell, made moral rehabilitation the justification for an ascent into good society:

That there should be subordination of Rank is natural and Just, and that the Man Convicted by the Laws of his Country of an offence, should give the most unquestionable testimony of his reformation, good conduct, and Character, before he is restored to Rank in Society, is most proper.⁴⁰

For settlers, in their private lives, it was a personal matter and accepted as such. For the military it became a public issue when they were obliged to rub along on social occasions with Governor and Mrs Macquarie's favourite emancipists.

Problems arose in the community when the settlers (both free emigrants and emancipists) claimed increased political rights and when the legal status of the ex-convicts was questioned. In 1819 a petition, which included a request for trial by jury, provoked unity. As the case for constitutional reform broadened into demands for trial by jury and representative government the question of whether emancipated convicts were to participate in these wished for institutions caused

³⁸ Henry Savery, *Quintus Servinton: A Tale founded upon incidents of Real Occurrence* (Brisbane, 1962 [1830-31]), pp.308 – 309.

³⁹ The phrase in inverted commas is from Carol Liston, *Sarah Wentworth: Mistress of Vancluse* (Glebe, 1988), p.5.

⁴⁰ Eagar to Bathurst, 6 November 1822, CO 201/111, p.264.

some division. The objection was made, not to these good British institutions, but of the move to grant these rights at a period when doing so could have meant the swamping of the free emigrants by a majority of ex-criminals.

Chapter Two

Colonial Society – rank and inequality

The events studied in this thesis took place within a settler community, which had developed only since 1788. Social relations and distinctions were both coarse, and subtle – and have proven complex for later generations to describe. What had been a prison was now becoming a homeland shared by one time prisoners, their gaolers, and new free emigrants. Normal social relations had to be adapted to deal with the problem of the social respect due to men, and women, who had once been prisoners, and what part they would take if political changes were to be implemented in the colony.

To represent their society, colonial Australians of the 1820s could have drawn a deformed pyramid. Many at the bottom, few at the top, and a bulge in the middle. Colonial society expressed an ordered and hierarchical view of itself through rank. At the peak of the pile the Governor, at the base the convicts, and somewhere about, sometimes above the convicts and often below, the natives. The aboriginals interested the free settlers far more than the convicts, they were entertained at Government House long before a freed convict would be invited. Assembled within the pyramid were columns of ranked individuals: the soldiers and sailors in military order, the government officers by their grades, the free settlers sorted by their fortunes and social refinement, the emancipists lifted high by money or lowered by poverty and lack of respectability, the convicts classified by their gaolers. With some pointed-elbowed jiggery-pokery, and some uncomfortable arrangements in the maze of tunnels and below ground chambers, there was a place for all – even the natives.

The sentimental invaders of New Holland, whose invasion was layered over a violent aboriginal society, grieved at the ‘brutal violence’ inflicted on the

native women by their husbands.¹ Some settlers queried their own rights, and looked with sympathy on the natives who were suffering the common, and always terrifying, ordeal of invasion and dispossession. Others however, possessed both paper titles and the innate certainty of their right to this land through their use of it. Their belief was not unusual. In 1630 John Winthrop justified the colonisation of the American lands from which it seemed God had used plague to remove the inconvenient natives: 'That weh [which] lies comon & hath never beene replenished or subdued, is free to any that possesse & improve it: ffor God hath given to the sonnes of men a double right to the earth; theire is a naturall right, & a civill right.'² The differences between people who planted roses, grew crops and bred sheep, and people who burnt, made understanding difficult yet the two met at surprising conjunctions. In January 1800 John Washington Price was startled 'when calling to see an officers lady, I found her sitting alone with two stout athletic natives who were perfectly naked & conversing with them with the greatest composure, unconcern & indifference.'³ Assimilating themselves within the new order some aborigines about Sydney jettisoned the boredom of traditional life for the ease and interests and pleasures of urban vagrancy. Aware of their physical losses, they were unaware of the nation state being constructed about them. Arriving in Sydney Governor Macquarie had urged the settlers 'to conciliate them as much as possible to our Government and Manners'.⁴

Another imaginary pyramid could be placed as a close neighbour to the first. At the same time as they were allotted ranks within the social order the people of the colony assumed roles within the complementary moral order. Christianity classified and arranged individuals and did not always, and exactly,

¹ Watkin Tench, 1788: *Comprising A Narrative of the Expedition to Botany Bay and A Complete Account of the Settlement at Port Jackson*, edited by Tim Flannery (Melbourne, 1996 [1799]), pp.246 – 247.

² Original spelling retained: Robert C. Winthrop, *Life & Letters of John Winthrop: Governor of Massachusetts-Bay Company at Their Emigration to New England, 1630* (Boston, 1864), p.311 - 312.

³ Pamela Jeanne Fulton, editor, *The Minerva Journal of John Washington Price: A Voyage from Cork, Ireland, to Sydney, New South Wales, 1798 – 1800* (Carlton South, 2000), p.150.

⁴ *Sydney Gazette*, 7 January 1810.

follow the contours of the social order. In both triangles the governor occupied a place at the top. Not always, in the Australian colonies, had the governor been at the sharp end of the moral order.

Religion was central, for without it there was no morality. Where religious belief existed, simple and secular minded descendants have discerned only cant. The Wesleyan revival of the eighteenth century was still seeping upwards from its low class origins into the upper classes, through the powerful Evangelical movement within the Anglican church. The Georgians around Sydney Cove were enthusiastic and passionate about their religions. Despite the caricatures of Samuel Marsden, who acted as a magnet for superlative invective ('this Tyrannical, Smuggling, Spirit Selling, Cattle Jobbing, principal Chaplain of New South Wales'⁵), colonial Australians believed in God, and lived in a moral society. The blinding dislike of religion of our own time, and an academic fashion for reading religion *only* as power, obscures the reality of past belief and the stability of the moral consensus. From their dependent position the prisoners expected their superiors to exhibit virtue in their dealings with them.⁶ Although discussing the later Victorian period in Great Britain, Gertrude Himmelfarb made a distinction between the goal of moral virtue, and its reality:

The standards were firm even if the behaviour of individuals did not always measure up to them. And when conduct fell short of those standards, it was judged in moral terms, as bad, wrong, or evil – not, as is more often the case today, as misguided, undesirable, or (the most recent corruption of our moral vocabulary) “inappropriate”.⁷

From the sea windmills and church spires were seen poking into the Sydney skyline, promising both bread and salvation. Believing himself divinely

⁵ Eagar to Bathurst, 6 November 1822, CO 201/111, p.269.

⁶ Alan Atkinson, 'Four Patterns of Convict Protest' in *Labour History*, No. 37, November 1979, p.32.

⁷ Gertrude Himmelfarb, *The De-moralization of Society: From Victorian Virtues to Modern Values* (London, 1995), p.13.

inspired, Francis Greenway⁸ built churches which embraced the new land with Georgian tact, balance, and beauty, to flaunt Anglican belief. For the majority, God was Protestant and Church of England, with non-Anglicans accepting similar moral values. Within the complex relationship of colonial state and colonial church the respectable and disrespectable found their respective stations.

Our forebears shoved and jostled to hold or improve their rank within a hierarchical social order, that explained and justified our original inequality.⁹ Though the imaginary social pyramid was built of imposingly solid blocks, they were mortared together by two elastic and pliable materials that allowed substantial alterations and reshaping – money and manners. The money is self-evident but what is almost invisible are the manners which linked and caressed or abraded these people. Manners are the life of a period, and too familiar and too taken for granted to be self-consciously recorded.

Class, rank, social distinctions are fascinating topics. R.H. Tawney wrote amusingly, although unconvincingly, that ‘The word “class” is fraught with unpleasing associations, so that to linger upon it is apt to be interpreted as the symptom of a perverted mind and jaundiced spirit.’¹⁰ Paul de Serville, a social historian of colonial status, commented on the ‘uneasy manner which overtakes many Australians confronted by evidence of social inequality.’¹¹ Some modern academic studies of our beginnings as a hierarchical society suffer, not only from ‘the enormous condescension of posterity’, but from posterity’s dislike.

New South Wales was founded as a society of clearly distinguished ranks. At first the highest social pretensions were the gentlemanly standards of the military mess. The officers’ numbers were small, but their presence was

⁸ Brian H. Fletcher, ‘Christianity and free society in New South Wales 1788 – 1840’ in *JRAHS*, volume 86, part 2, December 2000, p.107.

⁹ Not a popular view with modern historians – ‘In the case of convict women, social dimensions of class, religion and ethnicity compacted with gender to exacerbate problems’: Deborah Oxley, *Convict Maids: The forced migration of women to Australia* (Cambridge, 1996), p.203.

¹⁰ Cited in Paul Fussell, *Caste Marks: Style and Status in the U.S.A.* (London, 1984), p.15.

¹¹ Paul de Serville, *Port Phillip Gentlemen: and Good Society in Melbourne before the Gold Rushes* (Melbourne, 1980), p.23.

persuasive. Dealing with convicts and emancipated convicts their superior attitudes were instinctive, and enforced by the power they symbolised, and wielded. In the first decades after 1788 there was a moral and social division between the civil and military officers and the others: and yet, men of these upperish classes made room in their beds for convict women. Convict men had entered the police administration and the military, and when freed some enriched themselves. Freemasonry was present, bringing together odd fraternal connections between the disparate ranks. From a very early stage of the colony trade, and the involvement of emancipists in commercial activities with military officers, also made interesting connections.

At the beginning of the 1820s the hold of the officers' mess as the social centre of Sydney had weakened. Commissioner Bigge noted the changes:

The officers composing the late and present garrison of Sydney are brought much less into contact with the inhabitants than formerly; they associate with them less, and are further removed from those local disputes and jealousies to which all small societies are liable, and from the influence of which the colony of New South Wales is less exempt than almost any other of the remote dependencies of the empire.¹²

This dis-involvement was seen by Bigge as an argument for the continuance of military juries. A countering point of view was put by Edward Eagar in 1823. He claimed the 'Military Men consider themselves as at the head of Society, and aim at giving the tone to it'.¹³ This seems less true of 1819 and the early 1820s than for an earlier period of the colony's history which he had experienced. The picture of the colony presented in Bigge's published Reports show a society very different to the founding prison settlement of the early days. Eagar was arguing for trial by jury, and his assertion was used to support his argument, and to point

¹² *Report of the Commissioner of Inquiry on the Judicial Establishments of New South Wales, and Van Diemen's Land*, 21 February 1823, p.61.

¹³ Eagar to Bathurst, 3 April 1823, *HRA*, series IV, volume I, p.446.

out the 'esprit de Corps'¹⁴ of the military officers and thus, their unsuitability as judges and jurors within the Criminal Courts.

In 1827 Fanny Macleay, the daughter of Colonial Secretary Alexander Macleay and his wife Eliza, indicated the continuing fall of the military from social and fashionable dominance: 'By the bye, Officers Wives seem to be a very poor set indeed, judging from those belonging to the four Regiments here.'¹⁵ Serving garrison officers were always attractive creatures in their uniforms, but few held the high social cachet of previous times when they had occupied the highest positions. New South Wales was growing in population and becoming something greater than a prison. The military morals and ideals of the founding decades were no longer the highest social standards. An open and rakish sexuality was no longer acceptable, nor the gentlemanly codes of mess conduct so intimidating to outsiders. In 1825 Barron Field and his wife explained Mrs Piper's irregular matrimonial position to Eliza Macleay before she left for Sydney, and recommended Mrs Piper to her, 'but Mrs Macleay did not stomach it.'¹⁶ Yet new arrivals did adapt to the social realities of Sydney, for the Piper children were invited to mix with the Governor's at Government House.¹⁷

The wives and daughters of wealthy civilians and the government officers lived by more rigid morals and had different modes of entertaining. Wives replaced mistresses. In the early years the married John and Elizabeth Macarthur had been an oddity, whereas now couples, linked in companionship, were producing children, acquiring property and seeking virtue.¹⁸ A different Australian society grew about the settlers. English middling class women arrived

¹⁴ *Ibid.*

¹⁵ 25 March 1827: Beverley Earnshaw, Joy Hughes editors, *Fanny to William: The Letters of Frances Leonora Macleay* (Sydney, 1993), p.77.

¹⁶ Itself a comment on colonial standards, Field was passing this bit of gossip on to the Reverend Samuel Marsden. Field to Marsden, 22 March 1825, Marsden Papers, ML A 1992.

¹⁷ Invitation, 'Miss Darling requests the pleasure of the Misses Pipers Company to Dinner at three O'clock on Thursday 27th to keep her Brother Sydney's Birthday. Govt. House, Monday Morning', Piper Papers, ML A255, p.551a. Sydney Darling had been born on 24 April 1824, before the family came to New South Wales.

¹⁸ Not the view of all historians. Marion Aveling has written of the women of the 1820s and 1830s that 'freed women were locked more tightly into marriage, and bond women into more restrictive forms of penal discipline.' Cited in Grace Karskens, *The Rocks: Life in Early Sydney* (Melbourne, 1997), p.233.

and moved into the colonial upperish classes, where they intended to remain. The colonial ladies acclimatised to the Sydney weather, and to their own colonial rank, and found the English climate bitter and its society chilling. The ranking system of New South Wales was its own invention. Though the germ was British, the plant grew with unexpected vigour and became a quite different society.

Distinctions were both observable and subtle. A convict passing an Officer of the Crown and raising his hat or touching it enacted his position as much as soldiers within their own intimate world of hierarchy.¹⁹ An invitation, or its non appearance, indicated a certain social ranking. The minutiae of daily life indicated one's place. The rental of a church pew, and its location, reflected worldly, not moral, position. Addressing a letter with Esquire or plain Mister placed a man within the social hierarchy. Mr could be an insult to one and a compliment to another. When Henry Savery's fictional self, Quintus Servinton, was addressed as Mr by the surgeon on the vessel on which he was being transported to New South Wales his spirits rose at again being treated as a gentleman.²⁰ When Savery had arrived as a convict in Hobart the *Colonial Times* noted the event and wrote of him as 'Mr Henry Savery'.²¹ A nod in the street, the raising of a hat, the cut of a dress, the return of a call, the presenting of visiting cards, the ownership of a carriage, writing or presenting letters of introduction, all involved decisions which reflected the rank of the people carrying out or receiving these actions. The possession and the riding of a horse, which offered a superior mode of dealing with inferiors, suggest distinctions of rank. The murder of Dr Wardell by the young convict Jenkins took place when Wardell tried to force the escaped convict before him on his horse. Rank was a daily experience. Religion embraced men, and alienated them. The involvement of freed convicts in church society aided their entry into civil society.²² Religion, and those civil disabilities which the

¹⁹ Chapman, *The Diaries and Letters of G.T.W.B. Boyes*, p.233.

²⁰ Savery, *Quintus Servinton*, p.295.

²¹ *Colonial Times*, 16 December 1825.

²² Fletcher, 'Christianity and free society', p.107.

members of some religions still suffered, erected barriers between Anglicans, Dissenters and Catholics, Jews and non-Christians and to varying degrees lessened the barriers between co-religionists. In the Christian courts a Chinaman could break a saucer to take an oath while the unbelieving natives were barred from giving evidence.²³

In daily life men, from necessity, navigated their paths through the distinctions evident at all levels of civil life. The co-operation and friendships of people in the outlands could breach the civilised norms and then proprieties would be restored when returning to the settled areas. In the radical *Monitor*, in 1828, an editorial noted an occurrence that must have always been an integral part of the New South Wales social experience for the rulers: 'we find a secret attachment to the men, and a kind of sorrow that we were obliged on our return home to place our attentive and faithful companions in the Convict hut, to return to the common herd of bond-servants.'²⁴ What the convicts thought of this is unknown. This manly egalitarianism in the borderlands was buried in a civilizing world of deference.

In their social lives barriers were thrown up and defended, especially by the ladies and women of the colony who assumed the rank of their men. Much has been written of Macquarie's forced blending of his favoured emancipists and the military officers, but the ladies also held their views on the subject. Commissioner Bigge commented on their lack of enthusiasm for the spouses of the ex-convicts Macquarie turned into magistrates: 'One instance only has occurred in which the wife of a respectable individual, and a magistrate, has been visited by the wives of the officers of the garrison, and by a few of the married ladies of the colony.'²⁵ Behind these social barricades storms of bitterness engulfed individuals and families. Petty squabbles, ever-changing alliances and thin-skinned colonists made

²³ *Sydney Herald*, 6 June 1831.

²⁴ *Monitor*, 28 May 1828.

²⁵ *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, p.150.

it 'impossible to keep on good terms with all.'²⁶ After being in the colony several months Fanny Macleay decided 'The people here are half mad – They are for ever quarrelling with each other & are as angry with one as possible unless one embraces their prejudices & refrains from speaking to those with whom they are offended.'²⁷ In the 1824 edition of William Wentworth's book was a sketch of Sydney society:

Unfortunately, however, the town is not free from those divisions which are prevalent in all small communities. Scandal appears to be the favourite amusement to which idlers resort to kill time and prevent ennui; and consequently, the same families are eternally changing from friendship to hostility back again to friendship.²⁸

The hierarchical ranks of Georgian England and the army experience were translated into a new idiom as they adapted to the different conditions found in the colony, and made grudging place for those with new fortunes. The colony also allowed some individuals to move upwards, and reminders of their past positions were not always welcome. James Busby became uncomfortable when the *Monitor* 'immortalised me as "a young man formerly a Linen Draper of Edinburgh" – It is well this did not come out sooner – I think my character is too well established for it to injure me now.'²⁹ When the newly arrived Mrs Fenton was introduced to the family of George Frankland in Hobart, she disconcerted Mrs Frankland with her knowledge of the latter's family background in Britain, and alluded to her sister who was employed as a governess: 'I lost no time in communicating my discovery to Mrs Frankland, and at first it appeared to embarrass her, which made me repent having referred to it ...'³⁰ Not all newcomers possessed Mrs Fenton's professed tenderness.

Accepted rank in New South Wales was the fundamental framework over which the tendrils of society established themselves. Personal manners or

²⁶ Chapman, *Diaries and Letters of G.T.W.B. Boyes*, p.185.

²⁷ 28 May 1826: Earnshaw, *Fanny to William*, p.56.

²⁸ Wentworth, *A Statistical Account* (1824 edition), p.378.

²⁹ James Busby to George Busby, 22 August 1830, James Busby Papers, ML MSS 1668.

³⁰ [Mrs Fenton], *Mrs Fenton's Tasmanian Journal 1829 – 1830* (Adelaide, 1986 [1901]), pp.39 – 40.

etiquette (Thomas Hobbes tellingly called them the '*Small Moralls*'³¹), decorated individuals and aided, or impeded, their social acceptance. Regional and class dialects, uniforms, accent, cleanliness, smell, dress, headwear, jewellery, bearing, all offered visible and immediate signs of class. Manners, politeness and consciousness of responsibility served to soften some of the ranking distinctions. Maintaining the social ranks by snobbery served to exclude, and yet exclusion was not only performed downwards but also upwards.

In the beginning the founding, and natural, conservatism of Australia was present in both upper and lower ranks. Historical studies largely ignore lower class conservatism, and confine mentions of the topic to the middle and upper classes. The influence of E.P. Thompson has been over persuasive, and often constricting. Robert McKenzie and Allan Silver studied working class conservatives in Britain, but confined their study to politics rather than social life. They noted Walter Bagehot's belief that 'The English system of government has succeeded ... because England was a *deferential* nation. By this he meant that the lower orders were content that predominant political power should rest with the higher classes.'³² In these Australian colonies, founded by sailors, soldiers, marines, government officers and prisoners, deference was codified and rank accepted. The roots of Australian conservatism were present in the lower ranks, as in the upper. Lower class conservatism is instinctive, and has had no Burke to sketch its outline.

New South Wales and Van Diemen's Land were established during the long period of Tory dominance of British politics. Free emigrants, and government officers, were aided in advancing their colonial interests through patronage exercised on their behalf by Tory leaders. The prevailing political belief

³¹ 'By Manners, I mean not here, Decency of behaviour; as how one man should salute another, or how a man should wash his mouth, or pick his teeth before company, and such other points of the *Small Moralls*; But those qualities of man-kind, that concern their living together in Peace, and Unity': Thomas Hobbes, *Leviathan* (London, 1985 [1651]), p. 161.

³² Robert McKenzie, Allan Silver, *Angels in Marble: working class conservatives in urban England* (Chicago, 1968), p. 5. [Discussion drawn from Chapter 8 of Bagehot's *The English Constitution*]

brought by the settlers was conservative, and the political framework which encompassed their political thinking was Tory conservative versus Whig liberal. The conservatism of the founders was not reactionary but dynamic. The first paternalistic military governments of the penal colony nurtured a fledgling capitalist state within a protective collectivist administration. For the conservative mind, tradition, rank, ceremony are elements which unite the community. Australian conservatism was implanted in the new native soil when the feet of the first convicts sank into the sands of Sydney Cove and the first ceremony raised the possessive flag. Like the lost cows of the First Fleet, conservatism thrived on the new soil. This invading conservatism displaced the older, and more rigid, Aboriginal conservatism. The ideal of conservatism encompasses the wholeness of society, of a down as well as an up, and within the early colonial *Zeitgeist* was an acceptance of social inequality and even its desirability.

Respectability³³ was important to both high and low born. In 1822 Commissioner John Bigge was able to count the respectable amongst the emancipists. After receiving reports from around New South Wales, he claimed that of 4,376 remitted convicts only 369 were respectable.³⁴ In his opinion the benefit to be gained from increased free immigration had more to do with 'their respectability and their means' than upon their numbers.³⁵ At the upper levels it was an historically invisible marker that qualified entry into society, although in New South Wales respectability could have quite different meaning to what it had in Britain. Writing to Robert Wilmot Horton at the Colonial Office the Chief Justice Francis Forbes, a man of little humour, commented on 'New South Wales respectability which so far differs from English respectability, that *Convictism* alone will not tarnish its character.'³⁶ In England blending Sydney (or Botany Bay) and

³³ Respectability - 'That ubiquitous word!': Roe, *Quest for Authority*, p.40.

Despite its historical significance in Australia the word receives no coverage in *The Oxford Companion to Australian History*. Other missing words include gentleman, lady, faction, party, freemason, Tory, Whig.

³⁴ *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, p.143.

³⁵ *Ibid.*, p.155.

³⁶ Forbes to Wilmot Horton, 26 November 1825 in Bennett, *Some Papers of Sir Francis Forbes*, p.88.

respectability made good jokes. Edward Gibbon Wakefield wrote in his *Letter from Sydney* that ‘here the leaders of society are distinguished by a peculiar term. They are called “respectable” ... In England the *Quarterly Review* tells us “respectability” sometimes means keeping a gig – here it always means dining with the Governor.’³⁷ But Wakefield was wrong, for respectability did not only distinguish the upper class. Lower class respectability was an accepted virtue, and contrasted with another facet of lower class life which one writer has described as ‘rough’, being ‘devoted to drink, violence, and immediate gratification.’³⁸ Because respectable, these members of the lower classes feature far less in the documentation available for historical research.³⁹

Being a convict was a temporary condition. Edward Eagar, who had been transported for forgery, pointed out that convicts were not slaves, for a prisoner knew he would ‘reenjoy his forfeited legal privileges.’⁴⁰ The majority of those transported passed in and out of servitude to spend the remainder of their lives as Australian colonists. They entered the historical records as prisoners, and went out of them as free citizens. Their years as prisoners were one, if sometimes long, episode in their lives. After their contact with the recording bureaucrats of the convict administration was finished, the most interesting parts of their lives were less well documented. As free men and women they sought to gain colonial respectability, secure a niche in the social rank, and perhaps within the civil state. Possessing respectability was important to emancipists and their children; the losing of this hard won respectability a constricting fear. The word has not fared well with some modern writers who hold rigid ideas of the meaning of respectability which may not reflect contemporary perceptions. Michael Sturma

³⁷ Edward Gibbon Wakefield, *The Collected Works of Edward Gibbon Wakefield*, edited by M.F. Lloyd Prichard (Glasgow, 1968), p.118.

³⁸ Jeffrey Richards, ‘Victorian Values Revisited’ in *Encounter*, March 1987, p.74.

³⁹ The work and publications of Grace Karskens, an historian and historical archaeologist, suggests new archaeological sources for the recovery and study of lower class respectability. See index entries for respectability in Karskens, Grace, *Inside the Rocks: the archaeology of a neighbourhood* (Alexandria, 1999), and Karskens, *The Rocks*.

⁴⁰ Eagar to Bigge, 19 October 1819, CO 201/132, p.185.

suggests that '[i]n part, respectability may be associated with the diffusion of middle class values.'⁴¹ In R.W. Connell and T.H. Irving's *Class Structure in Australian History*, the word 'respectability' first receives an index entry at page 104 – a chapter covering the period 1840 to 1890 – and is linked with 'sexual repression.'⁴² However, Grace Karskens is more conscious of colonial perceptions. She touches on it throughout her work, and in *The Rocks: Life in Early Sydney* devotes a chapter, 'The Meaning of Respectability', to uncovering and charting its presence amongst the lower ranking residents of Sydney's Rocks.⁴³

In the 1820s increasing numbers of free settlers arrived with the determination to establish, or restore, their fortunes. Many were imbued with the pleasant idea that the land offered the life 'worthy of a gentleman.'⁴⁴ Emancipists shared the free emigrants desire for establishment and enrichment. The baron de Bougainville noted the intelligence of the convicts, and their transformation caused by the regularity of work: 'their above intelligence, which had caused the downfall in the first place and which they had learnt to make better use of.'⁴⁵ Governor Darling's Private Secretary had closer contacts with the penal community and accepted the change in their conduct, but doubted a real transformation in their values: 'there is rarely any amendment in their principles,'⁴⁶ The enriching process could blur distinctions of rank and lubricate movements within the social pyramid. Ranking changes occurred as changes took place in the life of individuals. Ticket of leave men could marry landowning widows, and become neighbours of the free settlers. Some emancipists became wealthy and purchased respect. Free emigrants who came to the colony as servants might branch out for themselves, and patronise former masters. Unknown men,

⁴¹ Michael Sturma, *Vice in a Vicious Society: Crime and Convicts in Mid-Nineteenth Century New South Wales* (St. Lucia, 1983), p.7.

⁴² R.W. Connell and T.H. Irving, *Class Structure in Australian History: Documents, narrative and argument* (Melbourne, 1980), p. 104.

⁴³ Karskens, *The Rocks*, pp.226 – 233.

⁴⁴ Elie Halévy, *A History of the English People in 1815* (London, N.D.), p.196.

⁴⁵ Rivière, *The Governor's Noble Guest*, p.156.

⁴⁶ Henry Dumaresq, CO 201/187. Emphasis as in original.

brandishing home favours, suddenly appeared to take important and well paid positions without colonial experience or capabilities.

To one contemporary the free settlers sorted themselves into an upper, middle and lower class.⁴⁷ The merchant Alexander Riley described four classes in 1819:

first the officers civil and military, and private gentlemen resident in it, who are for the most part engaged in mercantile pursuits; secondly, a certain number of persons of very creditable habits, who have come free from England, and have established themselves as traders and otherwise in the town; thirdly, many persons who are also householders and traders, who have been prisoners; fourthly, free labourers and prisoners.⁴⁸

Riley placed the wealthy emancipists above the free labourers who he placed on a level with the convicts. But to later observers how many classes were there in colonial society? Three or five? Were there only two? Convicts and emancipists on one side and soldiers, government officers and free emigrants on the other. Or were there even seven or more? Colonial ranking could be studied as high upper, lower upper, upper middle, lower middle, respectable lower, rough lower, convicts, black natives, white natives and then divided again by considering whether free or emancipist or colonial born or respectable or non-respectable or Jew or Catholic or Sydney black native or bush native or civilized native or aboriginal native or ticket of leave holder or retransportee. China in the sixth century B.C. had ten degrees in the social hierarchy, Mao's China modernised and introduced thirty levels.⁴⁹ However pioneer Australians saw themselves, the simplistic symmetry of the metaphorical people pyramid was distorted by the presence of the emancipated convicts. As the numerically strongest group they had wealthy representatives near the top of the pyramid, but generally they made

⁴⁷ In the 1824 edition of this book colonial society is divided into three classes - upper, middle and lower: Wentworth, *A Statistical Account*, volume I (1824 edition), p.379.

⁴⁸ Alexander Riley in 1819, cited in Melbourne, *Early Constitutional Development*, p.61.

⁴⁹ Simon Leys, *Chinese Shadows* (New York, 1977), p.113.

that plump bulge ('they constitute the middle and lower order of settlers in the colony'⁵⁰) around the middle of the imaginary social order pyramid.

All the settlers, and the natives coming into contact with them, were forming a cultural community. The colony 's political newspapers recorded the conflicts, but only hints exist of what John Stuart Mill calls the 'common sympathies.' These things were too much shared, too well known, to be written of by contemporaries. The political life that was forming, the coming to terms with, and the love of the land they were discovering, were uniting these people. The bitter political fights, cover a deep consensus. The historian J.C.D. Clark represented a similar consensus in the contemporary British Parliament, 'It would be wrong to overlook the extent to which, on most issues, most gentlemen on both sides of the House of Commons shared similar attitudes.'⁵¹ Ideas of right and wrong and support for traditional British constitutional rights were amongst the attitudes shared by the colonists – when disputes arose over these constitutional rights no one argued against them as principles.

A frankness may occur between lower classes and upper classes. It is possible to recognize and accept the bounds of rank and talk across them. The valets and soubrettes of Molière, or a reported conversation of middling class, commissariat officer George Boyes and his convict servant Elias Wood (although Boyes gives himself the best lines), belie a solid and rigid formality.⁵² Montaigne touched on an occurrence that must have been common in New South Wales. He suggests that the ancient Romans were familiar with 'Those insolent looks we see on our lackeys' faces', and quotes a Roman verse to prove his point.⁵³ There was the wordless observation of individuals by individuals, and class by class. In the home the convict servants watched and judged their masters. There were also

⁵⁰ *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, p.140.

⁵¹ J.C.D. Clark, *English Society 1688 – 1832: Ideology, social structure and political practice during the ancien regime* (Cambridge, 1987 [1985]), p.357.

⁵² Chapman, *Diaries and Letters of G.T.W.B. Boyes*, p.209.

⁵³ 'On ancient customs' in Michel de Montaigne, *The Complete Essays*, translated and edited by M.A. Screech (London, 1991 [1580]), p.335.

daily dialogues between lower and upper classes. The anti-authority element of this colonial heritage exists still in our humour. But, if authority is mocked or questioned it is because authority existed, and in our sources it is the human voice of authority that is missing. We hear only one side of the conversation. The forgotten people are the upper classes. Their spoken language is a dead language. Our hierarchical society contained people who looked upwards and were not obsequious but dignified, and of people who looked down and were not arrogant but considerate.⁵⁴

Not all the spoken language of the period has evaporated. Though some lower class obscenities and humour have been preserved, that of the upper classes, with sparse exceptions, is gone. The complete, small world, presented in the polite, blue volumes of the *Historical Records of Australia* leaves us unprepared for a Colonial Secretary, a gentleman, the brother of a Colonial Office Secretary, who said 'fuck.'⁵⁵ The spontaneous language of the gentlemen has vanished and is unrecoverable although its existence is sometimes hinted at. John Washington Price referred to a dinner he attended with the officers: 'where no ladies being in company, there was more freedom used both in singing and in conversation.'⁵⁶ Some low class, especially convict, language has been preserved in court records or Vaux's (self bowdlerized?) flash dictionary. The relaxed, familiar language of upper-class men has disappeared. When their disputes and feuds were recorded, the real words they used were dissolved in their educated written language.⁵⁷ For

⁵⁴ This interesting, and witty, distinction was made by Jacques Barzun in contrasting nobles and commoners: Jacques Barzun, *From Dawn to Decadence: 500 Years of Western Cultural Life, 1500 to the Present* (New York, 2000), p.245.

⁵⁵ 'Copies of letters received by the Governor', 1823 – 1825, AONSW 4/168.

⁵⁶ Journal entry 20 January 1800; Fulton, *The Minerva Journal*, p.147.

⁵⁷ Seeing history from the 'bottom up' (the inverted commas are theirs), Stephen Nicholas and Peter R. Shergold wrote that '[w]hile the convicts were highly literate, they have been made inarticulate by history.' This muddling comparison of adjectives distorts the real situation - the archival records hold a store of spoken convict language. The same authors continue, 'The convicts speak not in words, but out of the dry dust of the statistics collected in order to regulate their convict life.' Reinterpreting convictism only from the statistics renders the convicts truly inarticulate. Stephen Nicholas and Peter R. Shergold, 'Convicts as Migrants' in *Convict Workers: Reinterpreting Australia's past*, edited by Stephen Nicholas (Cambridge, 1988), p.45.

this reason, some suggestions are made as to the spoken language within Governor Darling's Government House at the time of the Sudds-Thompson Case.

The distinctiveness of our humour, the comic irony, the coolly detached demolishing of authority, has the earliest of colonial origins. What has continued in Australian lives springs from hierarchical beginnings. Our tradition of irony is the downside speaking of and to the upside. It is the private soldier or the non-commissioned officer speaking to a superior, it is the convict speaking to his master. Female convict humour is of a different nature. The soldier, the convict, used deadpan irony to deal with authority. Paul Fussell, considering army humour, has named this sort of talk 'unpunishable ironic insolence.' He suggests that it is the humour of 'the highly intelligent but unschooled.'⁵⁸ This comic irony permits the perpetrator a certain latitude of behaviour without getting into trouble. The lower class talk captured in the archives represents the words of those who didn't understand the rules or who went too far, and fell into the common colonial crime of insolence.

If the past is a foreign country, where they do things differently, it is also a place where they speak a foreign language. The sources from which an idea of the past is reconstructed are written in a misleading vocabulary for often the words prove false friends. Seemingly identical to those we use they carried different cultural meanings. To this foreign language we attach our meanings, and not those of their original users.⁵⁹ The easy words are the puzzling words, those that meant something strikingly clear to contemporaries and are vague, or meaningless, to their descendants, and we stretch to rediscover their meanings. The most untrustworthy items of vocabulary are those we think we understand, and imagine we share meanings with the ancestors, when the opposite is the case.

⁵⁸ Paul Fussell, *The Anti-Egoist: Kingsley Amis Man of Letters* (New York, 1994), p.39.

⁵⁹ Although the *Oxford Companion to English Literature* finds his Chapter Three 'superficial and discredited', Macaulay's stricture is still apt: 'If we would study with profit the history of our ancestors, we must be constantly on our guard against that delusion which the well known names of families, places, and offices naturally produce, and must never forget that the country of which we read was a very different country from that in which we live.' Thomas Babington Macaulay, *The History of England from the accession of James II*, volume one (London, 1934 [1849]), p.217.

Colonial status and rank were complex constructions, and two words in particular, gentleman and gentry, are words with subtle meanings whose contemporary use has not always been recognized in later historical representation.

A gentleman could be a government officer, a soldier, a convict, or even a Whig barrister. Linguistically gentleman has deep, unseen roots in Australian social history. Contemporaries immediately made judgments as to who was or was not a gentleman. In the novel *Quintus Servinton*, the 'once gallant, gay, fashionable' Captain Spendall, now imprisoned on the Woolwich hulks, recognized a fellow gentleman immediately he met the prisoner Quintus Servinton: 'Have I lived so long, ate with gentlemen, drank with gentlemen, fought with gentlemen, cursed, swore, and gamed with gentlemen, and do I not know a gentleman by instinct?'⁶⁰ It was a distinction that these new Australians would vaunt and fight to maintain. In a contemporary British definition the vagueness of what was meant is apparent:

the word gentleman is used to denote persons remarkable for the qualities and attainments which ought to distinguish those who have had the advantage of a liberal education, and, from their birth upwards, have associated with persons of refined and cultivated minds. It is likewise employed, in a restricted sense, to mean those who, by their wealth, are enabled, and by their disposition are induced, to live in entire idleness, engaged only in the pursuit of pleasure.⁶¹

The ladies and gentlemen of the 1820s were real, but what of a colonial gentry? If that word is to be a fruitful tool for interpreting colonial society then, at the very least, what it describes must be shown to have existed:

Third-party observers can of course classify anybody in any way they choose, thereby creating a "class", but if their analysis pretend to have any relevance to the functioning of the real world, then

⁶⁰ Savery, *Quintus Servinton*, pp.288, 290.

⁶¹ George Cornwall Lewis, *Remarks of the Use and Abuse of Some Political Terms* (London, 1832), p.80.

those “classes” must bear some resemblance to the actual flesh-and-blood people in the society.⁶²

Gentry is more than a word to name the nouveau riche, or to describe the possessors of granted acres, and convict servants. The term, like gentleman, is a word in a foreign language. In contemporary colonial usage it was seldom used to describe a finely observed degree of social rank. Instead it served various purposes in differing contexts. It was offered as a flatteringly inaccurate compliment. It was used pejoratively. It was deliberately chosen to mislead English readers, by creating the impression of a civilised and highly developed colony, and disguising the colonists in familiar British caste terms.

The landholders’ antecedents were often undistinguished, and they never formed a class of people, below the aristocracy and above the middle classes, with an association with the soil. Their possession of ‘dirty acres’⁶³ offered moderately clean income, but their position as pastoralists rather than agriculturalists did not follow the English model. A British reading of gentry is useless as a marker of colonial social class.⁶⁴ G.C. Bolton in his essay ‘The Idea of a Colonial Gentry’ (which deals with a later period) provided some grounds for naturalising the term. He contrasted the original with a colonial élite, which did not share the same origins, and argued that British models were appropriated not to subserviently recreate the home society but to express local realities of power and influence.⁶⁵

Some members of the British gentry emigrated or visited New South Wales. Edward Eagar was one such visitor.⁶⁶ When he wrote to Commissioner

⁶² Thomas Sowell, *The Vision of the Anointed: self-congratulation as a basis for social policy* (New York, 1995), p.48.

⁶³ Savery, Henry, *The Hermit in Van Diemen’s Land*, edited Cecil Hadgraft (St. Lucia, 1964 [1829-30]), p.62.

⁶⁴ A reading of G.E. Mingay’s analysis of the British class suggests the inapplicability of homeland gentry to colonial ‘gentry’. Mingay, G.E., *The Gentry: The Rise and Fall of a Ruling Class* (London, 1976).

⁶⁵ G.C. Bolton, ‘The Idea of a Colonial Gentry’ in *Historical Studies*, volume 13, October 1968, p307.

⁶⁶ Eagar is listed in *Burke’s Landed Gentry*. Noel McLachlan, ‘Edward Eagar (1787 – 1866): a colonial spokesman in Sydney and London’ in *Historical Studies*, volume 10, May 1963, p.432.

John Bigge suggesting the creation of a colonial assembly, he was writing to another visiting member of the gentry. Arguing his Eagar misleadingly assured the Commissioner that there were a 'respectable body of Gentry' from amongst whom representatives could be selected. In one of the few corrections in his 74 page manuscript, he had crossed out 'Gentlemen' and written in the far more emotive word 'Gentry'.⁶⁷

Architecture appears as a romantic adjunct to gentry. *The Oxford Companion to Australian History's* discussion of gentry (which follows an article on genocide), subsumes comments on gentleman and gentlewoman (surely lady?), and links a particular interest in the building of fine houses with a gentry class. This, it claims, appeared 'as soon as settlers escaped the immediate financial stringencies of pioneering.'⁶⁸ Did nice houses represent social values, and did these rub off on their occupiers? Such a discussion only makes sense if these houses existed, and in this period the great houses were rough sketches on scrap paper. Commissioner Bigge, enjoyed the hospitality of the leading settlers and wrote of their homes that 'Their habitations possess little of the comfort or the convenience that distinguishes the houses of the middle classes in England.'⁶⁹ A wealthy, leisured, rural based class did not exist in the 1820s. The idea of the land 'as the mother of virtue and prosperity' was fashionable in France and Britain⁷⁰, and was carried into New South Wales by many of the immigrants, but the time when they could put these ideas into practice had not arrived. Even as landholders, it was unclear whether they were to become residents or speculators. A gentry needs time, and generations of association, to establish itself. If a colonial gentry did take root, it is now we should be bestowing the accolade, or insult, not in 1825 when the families so rewarded were scarcely arrived.

⁶⁷ Eagar to Bigge, 19 October 1819, CO 201/132, p.184.

⁶⁸ Davison, *Oxford Companion to Australian History*, p.279.

⁶⁹ *Report of the Commissioner of Inquiry on the State of Agriculture and Trade in the Colony of New South Wales*, 13 March 1823, p.82.

⁷⁰ Keith Feiling, *A History of England: From the Coming of the English to 1918* (London, 1950), p.686.

Though some landholders dreamed of a plantation society, where a permanent underclass would be benevolently ruled by themselves, and their descendents, these were no more than fantasy and tempting illusions. The real world of the middling to upperish people granted large estates was quite different: more toothache, vomit and dead babies than the fictional world of *Alfred Dudley*, wherein an English authoress depicts an English dream of gentle settlers reproducing an English estate in the bush.⁷¹ Confronting a drunken convict woman insensible on the kitchen floor, or two convicts having sex in the privy, was common enough, but not something confronted by the fictional Dudley family. In the 1820s the mixed population sought survival and fortunes from the opportunities the colony offered. What they created was not a replica of what they had known, and the society which grew around them was unlike the one they had left behind:

People collected from various nations and classes, placed in circumstances totally new to all of them, very naturally and laudably directing all their thoughts and time to render themselves comfortable and thriving, must constitute a state of society totally different from, and, in many points, utterly at variance with that in which most intending migrants have moved and spent years of happiness.⁷²

Gentry makes sense when used within a complex class system, with aristocrats above and grades of commoners below. Paul de Serville, studying Victoria's colonial upper class, chose not to use the word: 'A gentry, in the sense of a body of families of gentle descent, holding estates and enjoying hereditary privileges and discharging duties, with a recognized place in society, did not exist in the empire.'⁷³ Nevertheless historians seem assured of its reality, and the *Oxford Companion to Australian History* offers a representative definition: 'the gentry was an insecurely self-defined status group with a paradoxically profound sense of its

⁷¹ The novel is an English fantasy by an anonymous author who had probably never seen Australia: *Alfred Dudley: or the Australian Settler* (London, 1830).

⁷² 'Emigration Report' in *Westminster Review*, volume 3, April 1825, p.453.

⁷³ Paul de Serville, *Pounds and Pedigrees: The Upper Class in Victoria 1850 – 80* (Melbourne, 1991), pp. 199 – 200.

own social importance'.⁷⁴ This then is transformed into the hybrid gentry, preferred by Australian historians, who are more at ease writing of a 'self-styled'⁷⁵ or even 'pseudo-gentry'.⁷⁶ Seldom is evidence provided for the use of the denigrating prefixes.⁷⁷ M.H. Ellis offered a further distinction, which suggests the realities of colonial life, by writing of an 'official gentry'.⁷⁸

Words which described one thing in England could be applied to a different thing in the colony, and at times the colonists chose their words to disguise or transform the antipodean reality. Francis Forbes differentiated colony respectability from genuine English respectability. Edward Eagar drew an imaginary gentry to impress Commissioner Bigge, and went on to hide the real grubby population of New South Wales behind the good roast beef and Merrie England names of 'Our Yeomanry and Industrious Peasantry'.⁷⁹ At the beginning of that same year, 1819, Eagar had taken a leading part in organising a petition for, amongst other things, trial by jury. In it the petitioners described themselves to the Prince Regent as the 'Gentlemen, Clergy, Settlers, Merchants, Land-Holders and other free Inhabitants of His Majesty's Territory of New South Wales'.⁸⁰ Events were soon to show that this too had been nothing more than a disguise, for shortly the imaginary social pyramid was to be seen as holding, not a great variety of ranked individuals, but only two classes of people above the convicts and aborigines - the emancipated convicts and the free emigrants.

⁷⁴ Davison, *Oxford Companion to Australian History*, p.279.

⁷⁵ See for example the conclusion to the 'gentry' entry in *The Oxford Companion to Australian History*: 'The code of gentility was far more persuasive and important than the influence of the group of self-styled gentry.' Davison, *Oxford Companion to Australian History*, p.279.

⁷⁶ T.G. Parsons, 'The Development of Early Colonial Capitalism: Some Thoughts on Connell and Irving's Class Structure in Australian History' in *JRAHS*, volume 68, part 2, September 1982, p.156.

⁷⁷ A colourful use of 'gentry' was given by the historian Tom Stannage, who applied it to a style of history writing which, he claimed, had dominated Western Australian historical writing - 'the gentry tradition of historical writing is elitist, pastoral, sexist - and racist.' Emphasis as in original, Tom Stannage, 'Editorial Note - The Aborigines and Western Australian Historians' in Bob Reece and Tom Stannage, *European-Aboriginal Relations in Western Australian History* (Nedlands, 1984), un-numbered prefatory pages.

⁷⁸ M.H. Ellis, *John Macarthur*, third edition (Sydney, 1978 [1973]), p.43.

⁷⁹ Eagar to Bigge, 19 October 1819, CO 201/132, p.184.

⁸⁰ Macquarie to Bathurst, 22 March 1819, *HRA*, series I, volume X, p.55.

PART TWO

Dividing society 1819 – 1821

Chapter Three

Constitutional rights and limitations

It was passionately argued that living in Sydney did not strip a man of his traditional English rights. In 1819 a request for the granting of trial by jury was added to a petition, mainly concerned with commercial reforms, which received widespread settler support. For some of the petition's organisers it was an early action in a campaign for changes to the political administration of New South Wales. In this nascent movement for the introduction of English constitutional rights, Edward Eagar took a leading part. Then, as Commissioner Bigge was gathering tales of the social exclusion of emancipated convicts, Eagar became a protagonist in courtroom trials which disturbed, not nebulous social interactions, but the legal rights of all ex-convicts.

In London, that January, Commissioner John Thomas Bigge received his instructions from the Colonial Office and was preparing for the voyage to New South Wales. About the same time, men in Sydney were discussing a petition to the Prince Regent.¹ After gaining the Provost Marshall's approval, a public meeting was held on 19 January which was presided over by the colony's only knight, Sir John Jamison.² A number of matters needing resolution were raised, and the meeting agreed that these should be placed in a petition. Speakers discussed such things as the increasing demand in the colony for British manufactures, and reforms needed to modify the restrictions on colonial shipping. Edward Eagar put forward a comprehensive motion which dealt with a range of topics: 'Trial by Jury; the Distillation of Spirits from Grains; the Repeal of Duties

¹ Legal historians David Neal and Patrick Parkinson misleadingly refer to it as an emancipists' petition. David Neal, *The Rule of Law in a Penal Colony* (Cambridge, 1991), pp. 167 – 187; Patrick Parkinson, *Tradition and Change in Australian Law* (Sydney, 1994), p. 135.

² Since 1813 permission had to be obtained from the Provost Marshal for meetings of more than six persons. See *Report of the Commissioner of Inquiry, on the Judicial Establishments of New South Wales, and Van Diemen's Land*; p. 77.

imposed in England upon Oils, Skins, Wool, Timber, &c, imported there from the Colony, as well as certain Drawbacks upon Colonial Export Duties'.³ When a committee was appointed to draft a suitable document, and present it at a second public meeting on 11 February, those chosen for the task were both free emigrants and emancipated convicts, and included Edward Eagar.

As these events were taking place, a London court shattered the assumption that colonial pardons automatically restored civil rights. James Bullock was a convict who had returned to England after being pardoned in the colony by Governor Macquarie. A dispute over a bill of exchange led him to sue in a London court. Dodd, the defendant, employed lawyers who used a novel defence. They questioned the validity of Bullock's pardon, and asserted that he did not possess the legal right to initiate court actions. In February the King's Bench found for the defendant, ruling that because Bullock's name had never been inserted into a General Pardon under the Great Seal of Great Britain, his civil status remained that of an unpardoned felon. Without restored civil rights, he lacked the capability to sue. The ruling threw into doubt the civil rights of all emancipated convicts in New South Wales. Whether they had received absolute pardons, conditional pardons, or were free because their period of imprisonment had expired, none of their pardons had been validated under the Great Seal. The decision had obvious and far reaching implications for the penal colony, but neither was it mentioned in Colonial Office despatches to Governor Macquarie, nor were steps taken in London to resolve the problem. Commissioner Bigge had not left England when this took place, but no mention of it appeared in his instructions. What was important in Sydney was not always seen as such in London.

John Bigge would become a disturbing element in New South Wales. By his presence, almost as much as by his investigations, he would trouble the society

³ The events of the meeting were followed in Van Diemen's Land where they were reported in the *Hobart Town Gazette* on 24 April 1819.

he was studying, and add to the problems he depicted in his Reports. In issuing his instructions the Secretary of State for the Colonies, Earl Bathurst, ordered Bigge to 'constantly bear in mind that Transportation to New South Wales is intended as a severe Punishment applied to various Crimes, and as such must be rendered an Object of real Terror to all Classes of the Community.'⁴ He also suggested a subject to scrutinize which he held little hope that the once chief justice of Trinidad would be able to resolve. He directed Bigge to consider the 'Propriety of admitting into Society Persons, who originally came to the Settlement as Convicts'.⁵ Despite Governor Macquarie's opinion that the emancipated convicts should be treated 'upon terms of perfect equality with the free settlers' having been approved by the Prince Regent, Bathurst noted that this issue had caused problems between the Governor and persons 'who hold association with convicts, under any circumstances, to be a degradation.' Bathurst claimed that the possibility of 'reconciling the conflicting opinions' made it a suitable topic to investigate. The Secretary of State made relations between the emancipated convicts and the free emigrants a dramatic subject, ideally suited to Bigge's quest. Any quizzing of the population was sure to raise interesting, if sometimes untrustworthy, criticisms of the governor and his favourites. Bathurst encouraged the Commissioner to probe and draw attention to the issue, ensuring that old memories and feelings would be stirred into present grievances.

Bathurst warned Bigge against revealing the results of his inquiry in Sydney, for this 'could only have the effect of inflaming existing Resentments and disturbing the Tranquillity of the Colony'.⁶ The Secretary of State seemed unaware that the investigation itself could disturb the colony's serenity, and was also unconcerned that the eventual publication of the Reports, where the evidence Bigge published, being unsworn testimony, could seem like the

⁴ Bathurst to Bigge, 30 January 1819, *HRA*, series I, volume X, p.7.

⁵ *Ibid.*, p.10;

also *A Copy of the Instructions Given by Earl Bathurst to Mr Bigge, on his proceeding to New South Wales*, 7 July 1823, p.2.

⁶ Bathurst to Bigge, 6 January 1819, *HRA*, series I, volume X, p.8.

conversational gossiping of neighbours against neighbours, and produce just that inflammatory reaction he had warned against.

In examining the social groupings of the colony John Thomas Bigge adopted the adversarial idea suggested by Bathurst, and in the first of his three published Reports presented the ex-convicts and the free emigrants as two opposing formations. Once again the question was raised, whose colony was it, the free emigrants' or the convicts'? Yet, it was not a question Bigge had been sent out to answer, for the Colonial Office knew the answer. Within the British Empire New South Wales was a penal colony, but in Sydney the imperial argument did not seem so convincing:

Both parties look upon each other as intruders. The free settlers considering that the rank, as well as the rights of the emancipated convicts, should be always kept in subordination to their own: while the emancipated convicts look upon no title to property in New South Wales, to be so good or so just, as that which has been derived through the several gradations of crime, conviction, service, emancipation and grant.⁷

Bigge's prose is clear and unequivocal. But on the eve of his inquiry, it seemed that the social division was not quite the schism he described.

The second public meeting was held in Sydney on 11 February to consider the petition committee's proposals. The finished work was marked by the concerns Edward Eagar had presented at the first meeting, and trial by jury had been placed at the head of the document. The other topics touched on commercial interests, including a request to repeal the 'high Duties on Blubber, Train Oil, Sperm Oil or Head matter, and Whale Fins'. Distributed throughout the colony the petition received extensive support, with over two thousand men signing it. In its preparation and dissemination no distinctions were drawn between free emigrants, those born in the colony, and those who had been convicts.

⁷ *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, p.153.

New South Wales was represented in glowing terms and allusions to a turbulent past were counterbalanced by descriptions of a tranquil and benign present, and hints of a socially blended population:

That the state and intercourse of society is much improved and daily improving among us. That passions and prejudices are almost entirely softened down and dying away, and that ties and connections have been formed, and are daily forming, which unite Man to Man, and strengthen the bonds and union of society.⁸

Forwarding it to Earl Bathurst Governor Macquarie described the signatories as 'All the Men of Wealth, Rank or Intelligence throughout the Colony.'⁹ Their agreement was real, the signatures attested to that, but their unity was fragile.

The inclusion of trial by jury in the petition was a beginning of a movement for the introduction of constitutional reform. In his Inquiry Bigge found that some signatories, in response to his questioning, now maintained they had not supported that part of the document.¹⁰ Edward Eagar was defensive, claiming that all the matters covered by the petition had been thoroughly discussed and represented the real wishes of the colonists:

It was not hastily got up at a clamorous popular Meeting. It was prepared by a Committee of most respectable Colonists. It underwent discussion at two public Meetings. Many alterations were made in the original Draft, And it remained two months for signature. And I do not vouch too much when I assert that, with the exception of one retired Naval and one retired Military officer, it met with the unanimous approbation, support and Signature of every respectable Individual in the Colony.¹¹

The petition asked for the introduction of trial by jury 'upon the strict principles of English Law.'¹² Later this phrase would come to mean the exclusion of the emancipated convicts (both those free by servitude and those who had received absolute or conditional pardons), but at that time the governor's pardon

⁸ Macquarie to Bathurst, 22 March 1819, *HRA*, series I, volume X, p.57.

⁹ *Ibid.*, p.54.

¹⁰ Archibald Bell signed the petition but told Bigge that he believed 'the inhabitants of the Colony are not sufficiently ripe for it.' See Ritchie, *The Evidence to the Bigge Reports*, volume 1, p.92.

¹¹ Eagar to Bathurst, 3 April 1823, *HRA*, series IV, volume I, p.442.

¹² Macquarie to Bathurst, 22 March 1819, *HRA*, series I, volume X, p.57.

was believed 'to restore the parties to all the privileges of free subjects.'¹³ In Sydney, in early 1819, the words may have meant no more than a suitable property qualification, although they may have been chosen to disguise an uncertainty as to what the actual legal position was.¹⁴ While *Bullock v. Dodd* was being fought in London, in Sydney the principle that emancipists who had received colonial pardons or finished their terms had had their civil rights completely restored was unquestioned. To support the petition the magistrates were circularised to provide lists of possible jurymen, and Eagar claimed they supplied the names of 700 'respectable Freeholders.'¹⁵ Given the nature of the petition, and Eagar's mentioning of this list, it presumably contained the names of suitable ex-convicts.

The 1819 petition was an optimistic document which represented a drawing together of diverse individuals with shared aspirations. When Bigge arrived in Sydney Edward Eagar gave him a copy, and a list of its signatories. Eagar annotated the names, indicating the free settlers and the free born. He also listed the thirteen justices of the peace, the four chaplains, the nine civil officers, twelve magistrates, and the eighteen gentlemen who signed. Here, before Bigge's investigations, once convicts and free emigrants appeared united - and amongst them were the Reverend Samuel Marsden and Hannibal Macarthur.¹⁶ The notable absences included those old foes D'Arcy Wentworth and John Macarthur, both of whom had doubts as to the wisdom of granting trial by jury to their colony.

The belief that the time had come for political change in the colony was also being expressed in England. As the settlers petitioned for trial by jury a colony born settler, resident in London, seemed to be pushing the arguments for constitutional change even further ahead. William Charles Wentworth was

¹³ *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, p.131. Bigge also notes that Justice Field had acted upon this assumption in a case heard by him on 27 August 1818.

¹⁴ See the evidence of Gregory Blaxland in Ritchie, *The Evidence to the Bigge Report*, volume 1, p.87.

¹⁵ This long letter from Eagar to Bigge, dated 19 October 1819, is on CO 201/132, and a partial transcription is included in John Ritchie's collection of the evidence to the Bigge Report. Ritchie, *The Evidence to the Bigge Reports*, volume 2, pp.16 – 17.

¹⁶ Eagar to Bigge, 19 October 1819, CO 201/132.

suggesting, in print, that a nominated council and a representative assembly were also wanted. The man has had his home at Vacluse turned into a national monument, and become a historical cliché - The Native Son, the emancipist's friend, the great patriot, the leader of the emancipist party and the movement for representative government, the bane of the 'exclusives'. William Wentworth is involved in each of the matters discussed in this thesis, and in discussing the man and his career some of the platitudes are queried.

In May 1819 Wentworth published his book, its scope, intent, and optimism indicated by its cumbersome title - *Statistical, Historical, and Political Description of the Colony of New South Wales and Its Independent Settlements in Van Diemen's Land with a Particular Enumeration of the Advantages which these Colonies Offer for Emigration, and the Superiority in many Respects over those Possessed by the United States of America*.¹⁷ As the first book written by a colony born settler it ensured welcome fame for its 28 year old author. The writing had been a laborious business, helped along by borrowings from other sources. Wentworth dreamed of a future state for the haves; and he had quite a lot. With neither an original mind nor novel political opinions, he proposed mercantile freedoms, similar to those being asked for in the Sydney petition. Politically, he argued for British constitutional rights, which should have appealed both to Whigs and Tories in New South Wales - trial by jury, a nominated council, and representative government, suitably based on property qualifications. What could be argued over (although the issue was not mentioned by Wentworth) was whether the ex-convicts would be permitted to participate in these innovations.

Wentworth had been born William Crowley on board the *Suprize*, moored in Cascade Bay Norfolk Island, on Friday 13 August 1790, and may have been the son of surgeon D'Arcy Wentworth.¹⁸ The latter was a voluntary exile who joined

¹⁷ Wentworth, *Statistical, Historical, and Political Description* (1819).

¹⁸ The querying of Wentworth's paternity was suggested in a personal communication from Anne-Maree Whitaker.

Dates have been taken from John Ritchie, *The Wentworths: Father and Son* (Carlton South, 1997), chapters 2 and 3.

the Second Fleet, to avoid probable conviction (and certain execution) as a highwayman.¹⁹ On Norfolk Island, and later in Sydney, he used colonial opportunities to become a rich man, and one of the largest landholders. He had a varied career which included chief police magistrate in Sydney - his progress from possible highwayman to thief taker was immensely profitable.

William Crowley's mother Catherine had been transported for seven years for stealing clothing from a house. She was 17 when loaded on board the *Neptune* for the voyage to Sydney in October 1789. D'Arcy Wentworth joined the same ship in mid-December. At some point they commenced a sexual liaison, and her son William was born the following August. John Ritchie, in *The Wentworths*, has suggested that 'Their son was born at least five weeks premature.'²⁰ William may not have been D'Arcy's child. In colonial eyes the boy was the bastard son of a freeman and a convict mother; not untypical early colonial origins. D'Arcy and Catherine Crowley never married, and the Wentworth name was grafted on Catherine's children when she and D'Arcy returned to Sydney in February 1796.²¹ If D'Arcy was the natural father then the handsome parent had produced, in William, a heavy shambling boy with a cast in his eye.

Catherine Crowley died in January 1800 when she was 27, and William was 9. Whatever bonds they shared are unknown. With D'Arcy Catherine had three children, Devon, Matthew, and Martha who died in infancy. On Catherine's death D'Arcy changed the names of 6 year old Devon to D'Arcy and 4 year old Matthew to John, William remained William. William grew up with the pretensions of a Wentworth, and the conflicting knowledge that his lower class mother had been transported for theft.

¹⁹ His flight to New South Wales was not his first plan to escape from Britain. In 1785 he was considering a move to India where he was planning to settle permanently 'if he meet with Encouragement to do so.' See the letter of recommendation, 22 December 1785, Wentworth papers, ML A 754-2, p.5.

²⁰ Ritchie, *The Wentworths*, p.53.

²¹ *Ibid.*, p.71.

D'Arcy Wentworth senior was born in Portadown, County Armagh, to an impoverished Irish family with connections to the Earl Fitzwilliam, the Marquis of Rockingham and the Earl of Strafford. Such links gave the poor relation aristocratic pretensions, and practical connections. From the distant Fitzwilliam cousin he and his family benefited from useful and influential patronage.²² The pride in his heart, the blue blood in his veins and very real support, may have given him the belief that he was above the military upstarts who had been placed at the heights of the penal colony administration, for he brought up his bastards with these pretensions. There may also be a suggestion of the vulgar arriviste in D'Arcy's manners. At a ball given by Sir John Jamison in 1824 D'Arcy, then aged 62, was robbed of 'a diamond brooch of considerable value.'²³ Was his wearing of valuable jewellery upper class refinement, or vulgar colonial ostentation?

In England and New South Wales D'Arcy had a preference for low life, and low class women - a taste shared by other colonial gentlemen. In 1806 Wentworth wrote to his friend Captain Piper, serving on Norfolk Island, advising him to expect some changes to the administration, and 'therefore make good use of your time amongst the young girls. Don't forget my old friend, Mary G.'²⁴ After Catherine Crowley died D'Arcy lived with two women, producing more Wentworth bastards. He never married in New South Wales. He may have been married in Britain, or his pride may have ruled out a legal connection with the convict women he tumbled.

D'Arcy has been depicted as a victim of social exclusion, though the barriers may have been erected on his side. If ostracised, his wealth and self-indulgent domestic habits were comfortable consolations. His social position was ambivalent. He mixed with wealthy emancipists²⁵, was a guest at Government

²² Anne-Maree Whitaker, *Joseph Foveaux: Power and Patronage in Early New South Wales* (Sydney, 2000), p.48.

²³ Chapman, *The Diaries and Letters of G.T.W.B. Boyes*, p.198.

²⁴ Wentworth to Piper, 29 November 1806, *Historical Records of New South Wales, volume VI, King and Bligh 1806, 1807, 1808* (Sydney, 1898), p.204.

²⁵ C.A. Liston, 'William Charles Wentworth - The Formative Years, 1810 - 1824' in *JRAHS*, volume 62, part 1, June 1976, p.21.

House during both Macquarie's and Brisbane's governorships, and yet is usually written of as a social outcast.²⁶ Was it really the case that his illegitimate sons were socially acceptable, and he was not? William Charles was Acting Provost Marshall between 1811 and 1816, between 1811 and 1815 young D'Arcy was a military officer stationed in New South Wales with the Governor's own 73rd Regiment.²⁷ Some colonists knew of D'Arcy's past, the accusations of highway robbery, and his almost fatal brushes with the law. Other contemporaries, including Governor Macquarie, believed he had been a prisoner. As late as 1825, the baron de Bougainville supposed that D'Arcy, whom he noted as 'one of the richest settlers', had been a convict.²⁸ Archival evidence suggests that only in 1819 did William, then aged 28, become aware of these aspects of his father's past.

Several contemporary sources have led historians to depict D'Arcy's exclusion. Justice Jeffrey Bent, of the Supreme Court, attacked the policies of Governor Macquarie towards freed convicts in a letter to Earl Bathurst in 1815. To harm Macquarie he condemned men encouraged and supported by him. D'Arcy Wentworth, he wrote, 'came out to this Colony under circumstances of great degradation, though not as a Convict, and he is not at this day admitted to general society among the respectable Officers and Gentlemen in this Territory.'²⁹ Behind his criticisms lay personal antagonism. On arriving in Sydney in July 1814, Bent had wanted to use a section of the General Hospital for his court. However, the rooms had been selected by Governor Macquarie for the residence of the principal surgeon – D'Arcy Wentworth. Angry with both Macquarie and Wentworth Bent may have exaggerated the latter's supposed exclusion to demonstrate the unfitness for high position of those the Governor had selected for advancement. That 'general society' he wrote of may have been

²⁶ Dinner invitation for D'Arcy Wentworth from Governor and Lady Brisbane, 20 July 1824, D'Arcy Wentworth Correspondence, ML A 754-1, p.207.

²⁷ Liston, 'William Charles Wentworth' pp.20 - 21.

²⁸ Rivière, *The Governor's Noble Guest*, p.41.

²⁹ Bent to Bathurst, 1 July 1815, *HRA*, series I, volume IV, p.146.

no other than his own social circle, those invited to his table. Within the colony were different social groupings, and Wentworth's banishment from one set did not recognize that he may have been an active participant in another, and more entertaining, social group. When Bent was writing, Wentworth was about 52. With a complex home life it is possible he was not interested in mixing with the respectable – in earlier life he had eschewed such company. Without a wife he selected his own companions and may not have found it necessary to please any but his own tastes. His claims to good birth would have allowed him to look down on the sort of people pushing into what passed as a colonial upper class.

In 1820 Judge Advocate John Wylde, who arrived in Sydney in 1816, was asked a leading question by Commissioner Bigge - was D'Arcy Wentworth considered as belonging to the convict class? Behind Bigge's question may have been an event which occurred when he was in London preparing for the voyage to Sydney. The radical Member of Parliament H.G. Bennet had published a pamphlet on the colony, *Letter to Viscount Sidmouth*, attacking Macquarie's administration. In it he made reference to D'Arcy Wentworth, calling him 'Mr Davey Wentworth', 'who has once been a convict'.³⁰ The claim that D'Arcy had been transported was false, and after a meeting with William, Bennet apologised for his error in the House of Commons. Wylde's response to Bigge placed D'Arcy Wentworth beyond the pale of good society:

The general impression, as far as I have observed it, has been very much the same towards him as towards the class the question alludes to; tho' Mr Wentworth, I believe, has at least very little general association, as I never met him at any place except at the Governor's table and on one occasion lately at a large party a little distance from Sydney.³¹

The phrase 'little general association' could have meant no more than Wentworth and Wylde mixed in different circles. Even so, Wylde did allow that Wentworth

³⁰ While supporting the extension of trial by jury to New South Wales, Bennet opposed the promotion of emancipated convicts into magistracies: 'I am sure justice ought to be pure and unsullied, and no man is fit to sit on the Bench, who can be openly reproached as having been once a convict by the criminal he is trying.' Henry Grey Bennet, *Letter to Viscount Sidmouth* (London, 1819), p.110.

³¹ Bigge evidence, examination of J. Wylde 1820, *HRA*, series I, volume IV, p.789.

was invited to Government House, and did attend social gatherings - which suggests he was not excluded from all good society. Historian Carol Liston suggests that Bennet's allegation would have been known of in Sydney just before Bigge arrived, and could have caused more rumours about him to circulate as the Inquiry was being conducted.³²

Bigge made D'Arcy Wentworth an outcast from good society, and gave his private life as the reason for his exclusion. Even as he did so, Bigge permitted Wentworth a superiority of manners, making him the active agent in choosing not to be part of that good society:

He has lived for some time in a state of concubinage with the wife of Free Person at his Houses in Sydney and Parramatta, and with another Female at a House situated between those places. By one of these women he has several Children, in addition to another family that he had by a Female with whom he cohabited during his residence in Norfolk Island. It is in consequence of the circumstances of his Domestic Life that Mr Wentworth has very rarely mixed in the Society of New South Wales altho' he has always been distinguished by propriety of demeanour when invited to partake of it and has been observed to shun rather than to court attention.³³

D'Arcy Wentworth was 28 when he arrived, and in his late fifties when Bigge judged him. In the early days of the colony there had been little out of the ordinary in the type of arrangements so disapproved of by Bigge. The colony changed, not Wentworth. Bigge's conclusion that D'Arcy 'rarely mixed' as a 'consequence' of his 'Domestic Life' may have represented the Commissioner's preconceptions, rather than the truth of social life in New South Wales. Bigge judged with English perceptions, and confused gossip with 'evidence'. D'Arcy had been principal surgeon, chief police magistrate in Sydney, superintendent of police, treasurer of the Police Fund, and a hospital contractor. A member of a privileged elite D'Arcy Wentworth chose his own society. At the beginning of

³² Liston, 'William Charles Wentworth' p.26.

³³ Commissioner Bigge's Despatches, 1819 – 1823, CO 201/142, p336.

settlement, such convict mistresses as his were not a handicap, but a colonial custom. His government positions, his influential Whig connections, and his wealth, made him a doubtful candidate for exclusion. Without too much sniffing about bed sheets, other people with unconventional 'domestic arrangements' but with birth, position or riches were able to enter colonial society, in instance Sir John Jamison in 1824. After an excursion a party, of which baron de Bougainville was a member, returned to Sir John Jamison's country house: 'At 6.30 p.m., having emerged from the Blue Mountains, we fired three shots to warn the lady of the manor of our arrival (the invisible lady who lives with Sir John in a de facto relationship) ...'³⁴ 'Exclusive' versus emancipists depends on these sources, and also the idea of a rigid colonial society. There were different elite social circles in New South Wales, and if the members of one high ranking group told Commissioner Bigge that D'Arcy Wentworth was unwelcome in their society, there were other colonists who would have told Bigge that Wentworth was welcome in theirs.

D'Arcy's critics disapproved of his habits, and so did his sons.³⁵ When he planned to rearrange his mistresses, placing Mary Ann Lawes in Home Bush and Maria Ainslie in Sydney, John Wentworth complained to his elder brother. When their father carried out his intentions John left the parental home and returned to sea.³⁶ He died of illness during a voyage in 1820.

D'Arcy Wentworth's great wealth gave him a comfortable life, and deference, outside a barred social level. If certain dining room doors, manned by the ladies and opponents of Governor Macquarie, were firmly closed this did not prevent him being named a magistrate, holding important government positions, or being respected in political and business dealings. Specific local matters, with often short term objectives, entrenched family interests, personal antagonisms and grievances, could unite parties or factions and influence their composition and

³⁴ Rivière, *The Governor's Noble Guest*, p. 94.

³⁵ W. Wentworth to J. Wentworth, 26 May 1818, Wentworth Papers A755, ff. 673 – 674; ff.23 –26.

³⁶ Ritchie, *The Wentworths*, p.173.

their duration. Short term truces, realignment of loyalties, the cutting of inconvenient affiliations, occurred to promote personal interests in commerce and agriculture, or to follow irrational and personal changes in social relationships. It is easier to see the distinctions which divided than to recognize the wholeness of the piece. The evidence for the exclusion of D'Arcy Wentworth may represent little more than tactical elements in a political contest to discredit Governor Macquarie in England.

The case of D'Arcy Wentworth suggests a complexity to colonial culture, which is erased when a monolithic class analysis is imposed to explain or describe contemporary social relationships. His supposed social exclusion is a confusing thing, with William Charles himself unaware of it, and unaware that some of the people with whom he mixed knew of his father's appearances before the courts, and even believed he had been a convict. Upper colonial society held a complex organism of elite groupings bound together by such things as rank, profession, mutual interests, mutual enmities, and even conflict. As voices were heard calling for constitutional changes the alliances and antagonisms within these higher social groups coalesced or moved into opposition in ways that had little to do with simplistic clichés of 'exclusives' versus emancipists. And their supposed baneful influence would have little to do with the political activities of D'Arcy's eldest son.

William Wentworth was singled out by Professor A.C.V. Melbourne as being the only person at this time demanding a legislature for New South Wales. As the matter was not raised in the colonial petitions of 1819 and 1821, and was raised in the 1819 edition of Wentworth's book, Melbourne reaches the conclusion that 'he spoke for himself, he spoke for no party in the colony ... He raised the cry; he then persuaded the emancipists to follow him.'³⁷ Melbourne's

³⁷ Melbourne, *Early Constitutional Development*, p.86.

Melbourne's proposition was accepted by Carol Liston, 'The political ideas were William's own views and were not actively supported by any group within the colony': Liston, 'William Charles Wentworth' p.20. However, Bruce Kercher noted that 'Wentworth joined a campaign that was already being

analysis has been influential, yet not being mentioned in these two petitions does not mean that the matter was unimportant to the colonists.³⁸ In early 1819 it was expedient not to mention a legislature, to have done so would have lost the petitioners the backing of their autocratic Governor. Macquarie supported settler arguments for trial by jury, but would not have aided their efforts to lessen his powers. Writing to Bigge, eight months after the 1819 petition, Edward Eagar discussed representative government, asserting that 'The public mind and attention in the Colony has been much and seriously applied to this subject.'³⁹ In the 1821 petition a legislative assembly was not raised because this was an emancipist reaction to *Eagar v. Field* and *Eagar v. De Mestre*. The petition only dealt with the matters raised by those legal cases, and does not reveal the full extent of the political aims or, what Bigge described as, 'the ambitious feelings of the higher classes of emancipated colonists'.⁴⁰

What Wentworth was asking for, what Eagar was calling for were not original political contributions. Both men were strong propagandists, but they were advocating measures already part of the political landscape. When Earl Bathurst wrote to Viscount Sidmouth in 1817, advocating the sending of commissioners of inquiry to New South Wales, he gave the argument which would so often be restated by the colonists, and their sympathisers, over the following decades:

The settlers feel a repugnance to submit to the enforcement of regulations, which necessarily partaking much of the nature of the rules applicable to a Penitentiary, interfere materially with the exercise of those rights which they enjoyed in this country, and to which, as British subjects, they conceived themselves entitled in every part of His Majesty's dominions.⁴¹

conducted in New South Wales'. Bruce Kercher, *An Unruly Child: A history of law in Australia* (St. Leonards, 1995), p.67.

³⁸ For an earlier correction to Melbourne's analysis see McLachlan, 'Edward Eagar (1787 – 1866)', pp.431–456.

³⁹ Eagar to Bigge, 19 October 1819, CO 201/132. p.183.

⁴⁰ *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, p.154.

⁴¹ Bathurst to Sidmouth, 23 April 1817, *Irish University Press Series of British Parliamentary Papers, Correspondence and Papers Relating to the Government and Affairs of the Australian Colonies 1816–30: Colonies Australia 3* (Shannon, 1970), p.239.

In recording this contention the Secretary of State was neither agreeing or disagreeing with the argument. His concerns with the colony were imperial, for him the British possession was a place for transporting offenders, and he was concerned with ensuring that the threat of transportation remained a threat which would diminish crime in Britain. If the penal objects could not be met then he even raised the possibility of ending transportation, but did not conjecture what would become of New South Wales:

the settlement must be either placed upon a footing that shall render it possible to enforce, with respect to all the convicts, strict discipline, regular labour, and constant superintendence; or the system of unlimited transportation to New South Wales must be abandoned.⁴²

Wentworth's proposals moved attention from discussion of the place as a prison to a colony of settlement and opportunity. He sought to extend and strengthen the privileges of the landholding settlers, suggesting subsidised passages for wealthy emigrants, the general easing of mercantile restrictions. When he mentioned the peculiar nature of New South Wales it was to urge tighter controls on convicts and limitations on 'a most pernicious and indefensible system'⁴³, that of granting them tickets of leave. Wentworth supported some wealthy emancipists but showed no warmth, or sympathy, towards convicts.

This 1819 book was partly written to settle old scores in his father's enmity with Governor Bligh, and assist Wentworth's own prospects. Anticipating future developments William had suggested to his father that it would ensure he would be 'offered a Seat in the Council'.⁴⁴ At other points during its writing it also became applications for the positions of Colonial Secretary, and John Macarthur's son-in-law. The volume made Wentworth's name, but was unsuccessful in its more personal objectives.

⁴² *Ibid.*, p.240.

⁴³ Wentworth, *Statistical, Historical, and Political Description* (1819), p.223.

⁴⁴ William Wentworth to D'Arcy Wentworth, 25 May 1818, ML A756

In 1817 and early 1818 William Wentworth daydreamed of romantic dynastic connections with the Macarthur family. John Macarthur had returned to New South Wales and the prospective suitor had submitted a written application to marry his daughter Elizabeth. How Wentworth worded his proposal, and how the question was answered by John Macarthur is not known for the correspondence was not preserved. In April 1817 William wrote to his father in grandiose terms of 'the formation of a permanent, respectable Establishment in the colony'. He promoted the acquisition of the Macarthur hymen for 'the accomplishment of those projects for the future respectability and grandeur of our family.'⁴⁵ No doubt he anticipated a successful response to the honour he was prepared to bestow.

William was in France in mid-year 1818. He had gone to the continent against the advice of his patron, Lord Fitzwilliam, and had undergone expensive medical treatment in Paris.⁴⁶ Contemporaries would have associated the words Paris and medical treatment with venereal disease.⁴⁷ If William went to France to receive treatment for syphilis it would explain why he remained there, and risked offending Lord Fitzwilliam. The sojourn was expensive and Wentworth was short of funds. On 29 July he wrote to John Macarthur junior to borrow money, but the letter went unanswered. Returning to London in late August he immediately wrote to his friend repeating his request. Awaiting financial help from his father his financial needs were serious.

⁴⁵ *Ibid.*, 10 April 1817, ML A756.

⁴⁶ *Ibid.*, William Wentworth to John Macarthur junior, 29 July 1818.

⁴⁷ Wentworth's illness (or illnesses?) had different names. On 13 January 1817 William Wentworth wrote to Lord Fitzwilliam of 'the pulmonary complaint, with which I have been so long affected', ML A756. When he was in Paris in May 1818 he wrote to his father that he had been suffering from 'a severe fit of the Rheumatic Gout ... [and] the state of indebility consequent on it', ML A756. Suggesting that the Paris treatment was successful, George Johnston junior wrote to him from Sydney on 1 March 1819 referring to his medical condition, 'Much pleasure indeed to hear of the improved State of your Health and that you had at length got rid of your Phthisical [sic] complaint', ML A 757. And on 24 November [date unclear on original] 1819 he gave himself a clean bill of health, 'I have not at present any predisposition to Phthisis [body wasting, normally a reference to pulmonary tuberculosis] remaining in my constitution', ML A756. For a study of the disease, especially in France, see Claude Quétel, *History of Syphilis* (Baltimore, 1992).

A significant breach occurred between William Wentworth and the Macarthur family. Wentworth's matrimonial request was rejected by John Macarthur senior, and he became involved in an angry exchange of letters with John junior. It is unclear when he learnt that his marriage proposal had been rejected, and it is uncertain what the two younger men quarrelled about. Their dispute was serious but the issues are uncertain, for none of the letters have been preserved. If the destroyed dreams of a marriage alliance hurt Wentworth he acted to repair the injury to his pride, and replaced Miss Macarthur with a new affection. In November he was writing, for the second time, to his father about new matrimonial plans with this unknown lady.⁴⁸

Already angered by the Macarthur family William was stunned, in early February, when H.G. Bennet published his false claim that his father had been a convict. Wentworth responded to the slur and threatened to call Bennet out before agreeing to meet with him to discuss the matter. Calmness ensued as both parties checked further. Wentworth consulted his father's agent Cookson, and learnt some unknown details about his parent's past. Bennet retracted his accusation in Parliament on 18 February, and reissued the *Letter* minus the offending passage. Although William's reaction was passionate and immediate, had he never heard these accusations against his father in the colony?

By April 1819, shortly before his book was published, William Wentworth's friendship with the Macarthurs was finished. William sent his father a copy of his 'unpleasant correspondence' with John Macarthur junior, and his anger extended to father and son, for he called John junior a 'chip of the old block'. The latter part of his book was being written as his enmity with the family was growing. The anti-Macarthur passages it contains may be explained by the threatening boast he made to his father, 'I will pay him off in his own coin'.⁴⁹

⁴⁸ The letter in which he first mentioned the new lady to D'Arcy has not survived. William Wentworth to D'Arcy Wentworth, 10 November 1818, ML A756.

⁴⁹ John Ritchie has Wentworth opening a letter from John Macarthur in August 1818 rejecting his marriage proposal, and 'In that instant Wentworth determined to "pay him off in his own coin" and to

When the book was issued in May it offered readers essays on colonial history, government, and administration - with chunks of text from other sources such as the *Sydney Gazette*, John Oxley's journal, and John Macarthur's conversations. In the writing there are great swings in style. Either there were unacknowledged helping hands, or Wentworth adopted prose styles he felt appropriate for each section.⁵⁰ The book was divided into four parts with an appendix. Written over several years it chronicled a violent change in its author's attitudes towards John Macarthur, whom it both praised and damned. Although Wentworth fell out with the Macarthurs during the late writing period his new enmity was not strong enough to force him to delete the words praising them he had already written.

In Part I the colony's social life was remembered and described and Wentworth wrote as a complacent insider:

Society is upon a much better footing throughout the colony, in general than might naturally be imagined, considering the ingredients of which it is composed. In Sydney the civil and military officers with their families form a circle at once select and extended, without including the numerous highly respectable families of merchants and settlers who reside there.⁵¹

His words don't suggest a world from which his own father was excluded, nor does he draw a society polarised between emancipated convicts and free settlers. The 'ingredients' he indicated are vague and give no idea as to whether they include the ex-prisoners. If D'Arcy Wentworth was shunned by some settlers his son seemed prepared to overlook the issue, or perhaps he believed that colonial society was inferior to the lofty family connections of the Wentworths. Scandal,

damn young John Macarthur as "a complete chip off [sic] the old block". Both the latter comments were directed at John junior, and were made in April 1819. Ritchie, *The Wentworths*, p.175.

William Wentworth to D'Arcy Wentworth, 13 April 1819, ML A756.

⁵⁰ These, and further comments on the various 'editions' of the book, vary markedly from the well known article published by Mark Hutchinson which analyses text from this book, and the so-called third edition of 1824. As is argued here, the 1819 and the 1820 books should be considered as one work, and the 1824 volumes as a quite different and distinct text written by another author. Mark Hutchinson, 'W.C. Wentworth and the Sources of Australian Historiography', *JRAHS*, volume 77, part 4, 1992, pp.63 – 85.

⁵¹ Wentworth, *Statistical, Historical, and Political Description* (1819), pp.27 - 28.

not a conflict between emancipated and free emigrants, is given as the reason for any divisions. That year the merchant Alexander Riley gave a more nuanced view:

There are three or four classes of society in New South Wales, the officers and gentlemen of the colony certainly will not mix in private with persons who have been convicts, but there are a considerable number of free settlers of creditable habits of life, who do not at all object to associate with persons who are settlers having been prisoners, many of whom conduct themselves with much propriety.⁵²

Part II of Wentworth's book tactfully praises Governor Macquarie, and abuses Governor Bligh. Wentworth composed his text before Bligh died in 1817, and added a further insulting footnote after his death. So strongly does Wentworth promote Macarthur's views on the deposed governor that H.V. Evatt called it 'the official Macarthur book'.⁵³ Describing the colony's government over the previous fifteen years, the author finds another class of villains, 'a set of rapacious, unprincipled dealers,' who are devouring the small scale emancipist agriculturalists.⁵⁴ As late as 1817 Wentworth described some of Macquarie's detractors as 'publicans and shopkeepers of the convict description, who live by preying on the settlers whose name they have now assumed.'⁵⁵ The wealthy merchants Wentworth wrote against were both free emigrants and emancipated convicts. Defending low-ranking emancipists Wentworth was condescending. He saw their misfortunes as being their own fault, brought on by the 'imprudent extravagance' to which they were 'inclined by their early habits of irregularity to licentious indulgence.'⁵⁶ That he himself was unable to live off his father's comfortable allowance escaped his analysis. His defence of the small farmer

⁵² Cited in Melbourne, *Early Constitutional Development*, p.61.

⁵³ H.V. Evatt, *Rum Rebellion: A Study of the Overthrow of Governor Bligh by John Macarthur and the New South Wales Corps* (Sydney, 1965 [1938]), p.140.

⁵⁴ Wentworth, *Statistical, Historical, and Political Description* (1819), p. 194.

⁵⁵ Wentworth to Bennet, 10 March 1817, cited in Anne-Maree Whitaker, *Joseph Foveaux*, p.171.

⁵⁶ Wentworth, *Statistical, Historical, and Political Description* (1819), p.196.

against the big trader was a lordly Whig disdain for the dirty business of business.⁵⁷

If the chapters on the recent past were marked by villains, one on proposals for the future was illuminated by the heroic figure of John Macarthur. The text of Part III was written before the falling-out with the family, and when Wentworth assumed he was to become John senior's son-in-law. It borrows and supports John Macarthur's ideas with fulsome praise: 'in spite of an incessant war waged against him by malignity and misrepresentation.'⁵⁸ Despite the fractured relations with the family the text was allowed to stand. John Macarthur had read the book by February 1820 and noted the use Wentworth had made of his ideas:

its tendency is highly mischievous – His notice of me is very obliging, and is I suppose intended in payment for the free use he has thought proper to make of my plans for the reformation and improvements to the Colony – I cannot, however say, that they have received much benefit by the alterations they have undergone in his hands.⁵⁹

Part IV offered political recommendations, and was the beginning of Wentworth's public revenge on the Macarthur family. Wentworth dealt with 'Traditional Rights' and suggested a legislative assembly, whose activities would be overseen by a nominated council, 'with many points of resemblance to the House of Lords' - later in life he would suggest an upper house based on an hereditary local peerage. With his own candidacy in mind he suggested the creation of the position of colonial secretary, and he recommended the introduction of trial by jury. The text was subdivided by three heads: 'Various Changes proposed in the System of Government', 'On the Means of reducing the Expences of this Colony', and 'On the Advantages which the Colony offers for Emigration'. In the first section the benign view of colonial society he had given earlier was revealed to have a dark side. An oppressive 'aristocratic junta'

⁵⁷ *Ibid.*, p.216.

⁵⁸ *Ibid.*, p.271.

⁵⁹ John Macarthur senior to John Macarthur junior, 20 February 1820, Macarthur Papers, ML A2899.

appeared. Wentworth had a talent for abuse, and he made a lively defence of the emancipated convicts with a virulent attack upon those who oppressed them. The section begins calmly (the original text may have been added to by an interpolated text⁶⁰), before Wentworth breaks into imaginatively charged language to defend the emancipated convicts. The personal tone of these pages contrasts with his few offhand references to the group in earlier pages.

The inconsistency, as Wentworth abuses the 'faction' into whose ranks he had wished to marry, is remarkable. In the previous chapter John Macarthur had been the victim of 'misrepresentation', now Wentworth selects the same word in accusing the Faction of acting against Governor Macquarie - 'to vilify his motives and misrepresent his actions'. The convict state is sentimentalised and ex-prisoners defended. Wentworth frames his text within the context of a family, and accuses the Faction of turning the fact of having been a convict into 'an hereditary deformity. They would hand it down from father to son, and raise an eternal barrier of separation between their offspring, and the offspring of the unfortunate convict.' The family metaphors Wentworth chose may echo his own feelings towards his father: 'to reflect disgrace on the offspring of the disfranchised parent.' Wentworth's hot language is a new, personal, and heartfelt element: 'Short-sighted fools!'. The angry words may be the repayment, in the 'same coin', he had threatened against John Macarthur junior.

This section's ardent evocation of the emancipists possesses a similar fervour to the defence of his father William sent to Bennet on 12 February, and could suggest that it was also written in reaction to the latter's claim that D'Arcy had been transported.⁶¹ Yet, it is also possible that this part of the book was

⁶⁰ Possibly, from 'There is I am aware' on page 346 until 'restored to the long lost enjoyment of equal rights and equal protection with his fellows?' on page 351, could be an addition to an original draft. This offers a block of text which may be analysed separately for it is written in a different tone to the writing which surrounds it, and if this whole block is deleted the text reads naturally. Wentworth, *Statistical, Historical, and Political Description* (1819).

⁶¹ The downtrodden convict which the text passionately evokes could be read as an exaggerated, and purified, D'Arcy: 'Shall the unhappy culprit, exiled from his native shore, and severed perhaps for ever from the friends of his youth, the objects of his first and best affections, after years of suffering and

written before February 1819, and before he read Bennet's pamphlet. Supporting this supposition Wentworth remarks in the text that the only 'privilege' held by freed convicts was 'that of suing and being sued in the courts of civil jurisdiction.'⁶² He would not have made this claim after 4 February, when the result of *Bullock v. Dodd* was published in *The Times*.⁶³ That case, which questioned the legal rights of the ex-convicts, had begun the previous October and, as a colonial and a lawyer, should have been known of by Wentworth. The timing is important. If the passages on the emancipists were written before February 1819 what explains the passionate language?

Bennet's erroneous comment on D'Arcy forced William to investigate his father's past, and this has been used in some studies to explain his personal and political contacts with the emancipists - one historian has explained this association as resulting from the 'the psychological impact' that knowledge of his father's personal history had on him.⁶⁴ However, his book's hot-blooded vindication may have been mounted in response to earlier slurs against D'Arcy made by John Macarthur junior in that 'voluminous', and lost, correspondence of late 1818. Wentworth's book was published in April 1819, and until a late stage in its production he was still tinkering with its text - for Bennet's pamphlet was referred to within a bland footnote.⁶⁵ Its inclusion may indicate that although furious with Bennet at the time, his rancour with the man, who retracted his remarks in the House of Commons, did not last. The deeper, and longer lasting,

atonement, still find no resting place, - no spot where he may hide his shame and endeavour to forget his errors?' Wentworth, *Statistical, Historical, and Political Description* (1819), pp.350 - 351.

The same passion and dramatic personal tone was present when William idealised D'Arcy's feelings and actions in defending him to Bennet in February: 'Descended from a long unsullied race of illustrious progenitors He felt that the Glory of his Ancestry was in some degree tarnished by the mere imputation that had been cast on his Character and He sought by a voluntary exile to a far distant clime to efface for ever the recollection of an unjust accusation - Vain Hope!' William Charles Wentworth to H.G. Bennet, 12 February 1819, ML A756, ff. 115 - 118.

⁶² Wentworth, *Statistical, Historical, and Political Description* (1819), p.347.

⁶³ Reported in *The Times* 4 February 1819, p.3a. [previously in *The Times* 31 October 1818, p.3c; 3 November 1818, p.3c; 18 November 1818, p.3d.]

⁶⁴ Liston, 'William Charles Wentworth', p.28.

⁶⁵ A footnote refers to this publication, Wentworth, *Statistical, Historical, and Political Description* (1819), p. 216.

detestation of the Macarthur family may well have begun with denigrating remarks about his father made by John Macarthur junior.

William Wentworth's book set out one view of the colony. He explored some elements of its past, and made some suggestions for the future. In doing so he praised allies and attacked enemies, his facts were not always correct, and personal antagonisms directed his judgments, but he treated the settlements as something more than a gaol and pressed for constitutional reforms suitable for his growing free homeland. The colony had been in existence just over thirty-one years, and as Wentworth was presenting his summation an official inquiry was being established to examine New South Wales and Van Diemen's Land in order to report to the Colonial Office on 'improvements and alteration' needed for its management.⁶⁶

⁶⁶ Bathurst to Sidmouth, 23 April 1817, *Irish University Press Series of British Parliamentary Papers, Correspondence and Papers Relating to the Government and Affairs of the Australian Colonies 1816-30: Colonies Australia 3* (Shannon, 1970), p.239.

Chapter Four

Bullock v. Dodd in New South Wales

New forms of power in New South Wales were being argued, but the peculiar nature of the colony forced other elements into the discussion. As Commissioner John Thomas Bigge was inquiring into the colony, and possibly misrepresenting the nature of its society, not only the proposed participation of ex-convicts in the future state became debatable, but also their actual legal standing. For a period it was to seem that instead of going forward to participate freely in a society of increased rights, the emancipated convicts did not even have the basic legal rights it had been assumed they possessed.

Wentworth's book was published some weeks too late to influence Commissioner Bigge, who sailed for New South Wales in April and arrived in late September. On 19 October 1819 Edward Eagar wrote the commissioner a 74 page appraisal of the colony. Eagar set about his task in a similar manner to Wentworth, though with fewer textual borrowings, and promised his reader a logical presentation: 'Government, Jurisprudence, Agriculture, Commerce, Revenue and Population, and then make some remarks upon the Colony generally as a place of Transportation, or corrective Prison.'¹ The inclusion of New South Wales as a prison in his topics touched on a subject vital to Bigge's Inquiry, and absent from Wentworth's book. Eagar's text was a genuine emancipist voice, and revealed a developed political sensibility.

By mid-October the outcome of *Bullock v. Dodd* was known in the colony for Eagar referred to the emancipated convicts' legal standing, and suggested a self-interested and legally dubious position which contradicted the findings of the London court - 'and finally after many years of unquestionable good Conduct – Some persons of great merit are granted absolute Pardons, which have all the

¹ Eagar to Bigge, 19 October 1819, CO 201/132.

effect and operation of the King's pardon under the Great Seal.² His conclusion was self-serving, for his own absolute pardon had been approved by Governor Macquarie the year before.³ Eagar also asserted that freedom restored the convicts' 'forfeited legal privileges.'⁴ Either intentionally, or otherwise, he was wrong. No convicts granted conditional or absolute pardons by the Governor had had these pardons ratified under the Great Seal.

Eagar's language was more forceful than that reported at the public meetings in January and February. If he had then cut his words to avoid clashing with Governor Macquarie he now revealed himself opposed to the powers of the governors, which he described as 'the most enlarged and despotic authority'.⁵ His criticisms of the colonial government were wide-ranging. He opposed the scale of court fees⁶, and suggested the introduction of both a free press⁷, and trial by jury⁸.

Convicts and emancipists were not a single block of the colonial social order. Having moved from restraint to freedom the social barriers between the two groups could be formidable, sometimes breached they were often maintained. For some emancipists, building new lives, the previous period of imprisonment was a shame to be escaped. For those enriching themselves convict labour was a useful, even necessary, commodity. When Eagar considered convict discipline this educated ex-prisoner took his place at the side of the gaolers:

The penal system of slight and frequent whipping serves mostly, only to harden the Criminal, and from its mildness rather to encourage than prevent crime – whereas if made more severe, and inflicted only for considerable offences, it would have the contrary effect.⁹

² *Ibid.*

³ Note 90, *HRA*, series I, volume X, p.825.

⁴ Eagar to Bigge, 19 October 1819, CO 201/132, p. 185.

⁵ Ritchie, *The Evidence to the Bigge Reports*, volume 2, p.4.

⁶ *Ibid.*, p.15.

⁷ *Ibid.*, p.9.

⁸ *Ibid.*, p.16.

⁹ Eagar to Bigge, 19 October 1819, CO 201/132, 185, p.206.

In an attempt to convince Bigge that New South Wales was an ex-prisoners' colony Eagar resorted to statistics. He showed the emancipated convicts, and the 'Children of Prisoners', as the numerically strongest group, stressing their economic importance and 'Moral Character'.¹⁰ Having established these matters for his argument he passed to the integration of the emancipated convicts within colonial society, and the aggressive reactions of those who opposed these moves. Eagar concealed the real situation, wherein Macquarie was raising some men above the stations they had occupied before their convictions. Bathurst had asked Bigge to investigate the 'admitting'¹¹ of these men into society, Eagar argued that the men were being restored to a social position they had forfeited:

The Question has been agitated whether, those Persons who were originally Prisoners should, notwithstanding any good conduct and successful Exertions in the paths of honest and honourable industry and wealth, be admitted to regain their former Rank and Condition in Society.¹²

The opponents of this blending were described as men 'accustomed to the Colony in its infancy'.¹³ Eagar's analysis was sketchy, it ignored the clashes of military officers with Governor Macquarie which had occurred when the governor had attempted to have the officers accept the presence of his chosen emancipists. The opponents Eagar described were the older settlers, and the barriers of exclusion they maintained were 'the prejudices of the few'. He argued that their position worked against reformation: 'You will never however great your Exertions or manifest your amendment, be restored to the station in Society you once possessed.'¹⁴ The topic was noted but not deeply explored, and it is unclear whether what he was describing was a serious problem, or a simple annoyance.

¹⁰ Ritchie, *The Evidence to the Bigge Reports*, volume 2, p. 30.

¹¹ Bathurst to Bigge, 30 January 1819, *HRA*, series I, volume X, p. 10, also *A Copy of the Instructions Given by Earl Bathurst to Mr Bigge*.

¹² Ritchie, *The Evidence to the Bigge Reports*, volume 2, p. 31.

¹³ *Ibid.*

¹⁴ *Ibid.*

At the end of October Macquarie's appointment of William Redfern, an emancipist, to the magistracy caused a rift between himself and Bigge. The issue spoiled their relations, and engendered a disagreeable correspondence.¹⁵ When Bigge moved his investigation to Van Diemen's Land in February 1820¹⁶, Macquarie took advantage of a ship's sailing to complain of the Commissioner's behaviour to the Colonial Office. He made an accusation that was to be followed by other contemporary critics, he claimed that the Commissioner had arrived with a 'deep rooted Prejudice' against those who had come out as convicts.¹⁷

While Bigge was in Van Diemen's Land the impossibly rosy 'union of society' the 1819 petition had depicted for the Prince Regent was disturbed by the rippling influence of *Bullock v. Dodd*. In 1820 it entered the colonial courts, and spread from being a barrier to the emancipists' civil rights to threaten the commercial activities of the free settlers.¹⁸ Its use as legal precedent was brought into play in March and April when Edward Eagar initiated two prosecutions against the Supreme Court Judge, Barron Field.¹⁹ Eagar, always litigious, claimed to be acting in the public interest by suing Field for £50 to recover court fees. The emancipist brought on the prosecution to take advantage of Bigge's presence. After making his attitude towards the fees known to the Commissioner²⁰ he now used the courts to force the matter into his investigations.²¹ In the second charge, the judge was sued a further £50 damages for having said to Eagar, from the bench of the magistrates court at Parramatta on New Year's Day 1820, with Bigge listening in the courtroom²², 'You have made seditious Speeches and you have reared up the Standard of Disaffection and party. You are a revolutionist.'²³

¹⁵ Macquarie to Bathurst, 22 February 1820, *HRA*, series I, volume X, pp.214 – 235.

¹⁶ He left Sydney on 6 February and returned on 4 June 1820.

¹⁷ Macquarie to Bathurst, 22 February 1820, *HRA*, series I, volume X, p.217.

¹⁸ *Ibid.*, Macquarie to Bathurst, 1 September 1820, pp.351 – 364; Whitaker, *Joseph Foveaux*, pp.174 – 176.

¹⁹ The following details of the cases are drawn from Macquarie to Bathurst, 1 September 1820, *HRA*, series I, volume X, pp.351 – 364.

²⁰ Eagar to Bigge, 19 October 1819, CO 201/132.

²¹ Eagar to Bathurst, 3 April 1823, *HRA*, series IV, volume I, pp.462 – 463.

²² *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, 1822, p.133.

²³ Note - punctuation added.

Eagar's critics attacked his moral pose, objecting that he had paid court fees without question for some years when he had been acting as a solicitor, and that the charges were 'malicious, vexatious and vindictive' and being brought to harass the judge.

Eagar was a sharp dealing businessman, about 31 years old, and with useful and widely advertised religious convictions. Judge Barron Field held a privileged, and perhaps intoxicating position. In the colony he was a man of substance with a judgeship, a wife, a comfortable salary (supplemented by profitable court fees), and granted property. He had a barbed tongue, wide interests, and interesting literary friends in England. He was the author of the first book of poetry published in Australia, *First Fruits of Australian Poetry*, which revealed the poetic possibilities of the antipodes.²⁴ A reviewer in the *New Monthly* offered readers lines from the works, and found particular amusement in a poem called 'The Kangaroo' – with its reference to that memorable creature the 'duck-mole'. The reviewer was struck by the poetic possibilities of the kangaroo: 'an object in its form so adapted to a variety of measure - *spondaic* behind, and *pyrrhic* before'.²⁵ Edward Eagar found neither poetry nor humour in his adversary. Only one year older than Field, Eagar criticised him to Bigge as 'a very Young Man' with a lack of legal practice.²⁶ Judge Field was also capable of using the courts for his own ends.

When the matter came to trial the defendant Judge found the legal loophole offered to him by *Bullock v. Dodd* irresistible. Field's defence argued that Eagar as a convicted felon was incapable of suing, and asked for a twelve month stay on proceedings while a copy of his original conviction was obtained from Ireland. Although no 'legal report' of the Bullock case had been received the trial minutes noted that 'it is well known that this very question was decided in King's Bench, Michaelmas, 1818'.²⁷ William Henry Moore acted as Field's attorney, and

²⁴ Barron Field, *First Fruits of Australian Poetry* (Sydney, 1819). A second edition was published in Sydney in 1823.

²⁵ 'First Fruits of Australasian Poetry' in *New Monthly*, volume I, 1821, pp.682 - 686.

²⁶ Eagar to Bigge, 19 October 1819, CO 201/132.

²⁷ Macquarie to Bathurst, 1 September 1820, *HRA*, series I, volume X, p.359.

some thought had been given to the enormity of the defence they were making, and its impact on the future working of the colonial legal system. Moore argued the precedent to save the judge, while noting that the courts would be closed if this argument was allowed to operate in all cases. To prevent this happening he suggested that the use of *Bullock v. Dodd* should be selective, and that the court had the power to refuse similar defensive requests, and could bring matters to immediate trial. Field later argued that the courts would be 'mad' to 'give every opposite party time to send home for the record of the suitor's or witness's conviction', and suggested that even if this did happen little serious harm would be done, for it would also allow the ex-convict time to obtain the King's pardon.²⁸

Both plaintiff and defendant were acting in the knowledge that their actions were being scrutinised by Commissioner Bigge. Judge Field had even written to him in Van Diemen's Land about his intended use of *Bullock v. Dodd*.²⁹ The Commissioner advised the Judge not to use the precedent, but his letter was too late to have an influence on Field's decision: 'By his private communication with Mr Justice Field, Mr Bigge recommended him not to plead the Plea of convict attaint to Mr Eagar's actions.'³⁰ On 4 April Judge Advocate Wylde issued a stay in proceedings, postponing the cases for twelve months, to allow for information to be obtained from Ireland regarding Eagar's original conviction.

Wylde's decision gave the Governor time to seek advice from the Colonial Office, but Macquarie was slow to react. Soon after the trial he had the opportunity to send mails to England but he did not raise the matter in his correspondence. In fact he told Under Secretary Goulburn, in a private despatch, that 'The Colony is perfectly quiet and tranquil, and going on in all respects as usual.'³¹ His next opportunity for corresponding with Downing Street was not until the beginning of September, and then his despatch informed the home

²⁸ Italics as in original, Field to Bathurst, 15 January 1823, *HRA*, series IV, volume I, p.424.

²⁹ *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, p.137.

³⁰ Ritchie, *The Evidence to the Bigge Reports*, volume 2, p.266.

³¹ Macquarie to Goulburn, 22 April 1820, *HRA*, series I, volume X, p.302.

authorities of what had taken place, claiming it had provoked 'Much and well founded Alarm'.³²

All pardoned convicts were in a similar legal position to Eagar as no colonial pardons had been ratified under the Great Seal. Since settlement the freed convicts had played an important part in business and commercial activities. If none had had their civil rights restored the legality of contracts made by them were thrown into question, for their 'rights, property and personal security are thus struck at and rendered totally insecure.'³³ Goods and landholdings had been the subject of contracts between the emancipists and free settlers. Properties had been bought and sold many times and the title deeds were complex documents, whose validity collapsed if the legal right of ex-convict 'owners' to hold or sell the title was void. The situation, they claimed, left them 'to be considered as Convicts attaint, without personal Liberty, without Property, without Character or Credit, without any one Right or Priviledge [sic] belonging to free Subjects.'³⁴ Not only the civil rights of the emancipists were in doubt, but also the property rights of the free emigrants.

On 15 September the importance of the matter was emphasised when Prosper De Mestre, having been sued by Eagar, successfully maintained in the Supreme Court that his opponent lacked the legal capacity to bring such an action.³⁵ This second triumphant application of *Bullock v. Dodd* to constrain the legal rights of the emancipated convicts brought home the insecurity of their position. Governor Macquarie was petitioned by a group of the leading emancipists to be permitted to hold a meeting 'for the discussion of the grievances under which they were found to labour'.³⁶ Macquarie discussed the request with Bigge, and permission was given after the organisers presented a copy of the resolutions they wished to discuss. Bigge proposed some alterations, and Eagar

³² *Ibid.*, Macquarie to Bathurst, 1 September 1820, p.351.

³³ *Ibid.*, p.352.

³⁴ *Ibid.*, Macquarie to Bathurst, 22 October 1821, p.554.

³⁵ *Ibid.*, Emancipated colonists' petition, pp.553 – 554.

³⁶ *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, p.135.

promised that 'no allusion should be made to the conduct of Mr Justice Field, in taking the benefit of the law in the actions that had been brought against him.'³⁷ Perhaps not coincidentally Field was absent from Sydney, and sailing towards Van Diemen's Land, when the meeting was held on 23 January 1821.³⁸ After some discussion an Emancipated Colonists Committee was formed to handle the campaign for the restitution of their legal rights and the outline of a rough draft petition was approved.³⁹

The Prince Regent had become George IV and the emancipists, united 'for their common protection', petitioned him for justice.⁴⁰ The petition emphasised the emancipists patriarchal ambitions to leave property, and their good names, to future generations. They drew the King's attention to their regained or restored respectability, they emphasised their social positions, and depicted themselves as a self-confident, enterprising majority:

the good Character, they had gained, the rank and Station in Society they had arrived to, and the Wealth and Property that, by their Exertions and Industry, they had Acquired, was well secured to them and to their Children after them, without the possibility of being Interrupted or defeated; and that they would have been able to enjoy the satisfactory Consolation of bequeathing to their Children (who never transgressed the Law) not only the produce of their Exertions and Industry, but, what is of far greater Value, the Inheritance of a retrieved Character.⁴¹

Unsettling of property rights unsettled society. For political reasons harmony had been described in the settlers' petition of 1819, but the emancipists' petition threatened a much disjointed society:

And your Petitioners further most humbly represent unto your Majesty that these decisions of the Courts of Justice in this Colony will have the effect of introducing and perpetuating party distinctions, unpleasant discussions, irritable feelings and Jealousies, heats, Animosities and diversions, between Your Majesty's free

³⁷ *Ibid.*

³⁸ *Sydney Gazette*, 13 January 1821.

³⁹ *Sydney Gazette*, 27 January 1821.

⁴⁰ Eagar to Bathurst, 3 April 1823, *HRA*, series IV, volume I, p.464.

⁴¹ Macquarie to Bathurst, 22 October 1821, *HRA*, series I, volume X, p.552.

Subjects in these Territories, not only of the present Generations but for Generations to come.⁴²

The men who wrote the petition were well aware that mention of 'party' divisions would catch the attention of readers in Downing Street. They were prepared to depict a party, an anti-emancipist party, but avoided calling themselves an ex-convict party. They wished to be seen from London as a melded settler society where all members, except the serving convicts, claimed common civil rights. Field's actions had the possibility of creating two classes in the colony distinguished by their legal rights. If trial by jury and representative government had been granted at this time the emancipists would have been excluded from participating.

Commissioner Bigge left New South Wales on 14 February 1821. Although the emancipated convicts' petition had been finalised Governor Macquarie delayed sending it to the Colonial Office until October. When it went Edward Eagar and William Redfern were passengers on the same ship. Eagar had been nominated as the 'Agent of the Emancipated Colonists'⁴³ and was leaving the colony to argue the petitioner's claims in London. To counteract the adverse reports which it was expected were being sent to London both men were given letters of introduction to Lord Bathurst by Governor Macquarie.⁴⁴ Eagar was never to return to Sydney, his departure removed, but did not silence, the colony's most forceful emancipist voice.

On returning to London John Bigge prepared his first Report, which was published on 19 June 1822. It was followed by a further two Reports in 1823. Not unsurprisingly, given the instructions he had been issued, they were, as the historian J.J. Eddy noted, 'favourable to the continuation of the convict system as an imperial asset'.⁴⁵ Bigge's Reports were furiously contested. The testimonies for his colonial inquiry had been collected without swearing the witnesses by

⁴² Ibid., p.555.

⁴³ Eagar to Bathurst, 6 November 1822, CO 201/111, p.248.

⁴⁴ Macquarie to Bathurst, 22 October 1821, *HRA*, series I, volume X, p.557.

⁴⁵ J.J. Eddy, *Britain and the Australian Colonies 1818 – 1831: The Technique of Government* (Oxford, 1969), p.256.

oath. Was this material gossip or evidence? Did the Reports contain intellectually sound arguments based on solid grounds or were they doubtful propositions influenced by spiteful colonists? Had the Commissioner conducted his inquiry with his mind already resolved on his conclusions? Had his independence been compromised by his personal friendly relations with John Macarthur? Those he criticised disparaged the evidence, disputed his analysis and contested his proposals for change. Edward Eagar rejected the first Report in a long and angry rebuttal addressed to Earl Bathurst in November. At stake were London perceptions of the colony, and changes to the administration which would be initiated by the Colonial Office.

New South Wales was a quantity of real estate, but it was also a paper and ink possession. The men of the Colonial Office held abstract concepts of the New South Wales over which they presided. Their idea of the place was drawn from reports and despatches, stuffed and preserved animals, drawings, maps and paintings, native artefacts and statistics, gossip and hearsay – perhaps even Field's poetry. When they transported convicts, recommended settlers, advised on the granting of crown lands, opened or closed penal settlements, and decided matters of minute detail, they moved objects across a territory they knew only imaginatively. While the governors faced the reality of empire, the Secretaries of State and the Under-Secretaries dealt with the idea. Their Downing Street office became a battle ground for two conflicting visions of New South Wales – the penal colony versus the free settlement. Edward Eagar made Bigge's Report an opportunity to place before Earl Bathurst a different reading of the colony.

Bigge examined colonial society in his first Report. He found division, and described it by writing its history. He postulated an original separation between the emancipated convicts and the civil and military officers:

I have been repeatedly informed, that the exclusion of convicts from the society of the free classes, had been uniformly adhered to by the governors of the colony; and that the civil and military officers were in the habit of exacting from the emancipated

convicts, the same species of respect as they had yielded in their former state of servitude.⁴⁶

How could it have been otherwise? Eagar agreed with Bigge that in earlier times there had been two classes of society, civil and military settlers on one side and the convicts and emancipists on the other.⁴⁷ Eagar also agreed that this division had produced 'the System of oppression and insult – acted upon by the old Emigrant Colonists towards the Emancipists.'⁴⁸ Where Eagar quarrelled with Bigge was in describing contemporary discrimination. Joseph Foveaux had governed the colony after the Bligh rebellion, until handing over to his superior William Paterson, and had assisted Governor Macquarie when he arrived. Foveaux, according to Bigge, treated the emancipated convicts 'in the same reserved and distant manner in which the civil and military officers of the colony had always regarded them.'⁴⁹ Eagar, who had not been in the colony at the time, praised Foveaux for recommending to the new governor the mode of treatment which he adopted towards the emancipated convicts.⁵⁰

While marking the boundaries of discrimination, Bigge did allow for some subtleties. He claimed that Macquarie found on his arrival that some free settlers, who would not publicly associate with emancipated convicts, 'kept up a constrained and private intercourse, whenever they found it beneficial.'⁵¹ Eagar further asserted that many of the barriers between free and emancipist had ended when the old New South Wales Regiment was replaced at the beginning of Macquarie's governance.⁵² Bigge's evocation was disputed by Eagar, who contended that society was far more fluid than the Commissioner's sharply delineated narration allowed.

⁴⁶ *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, p.144.

⁴⁷ Eagar to Bathurst, 6 November 1822, CO 201/111.

⁴⁸ *Ibid.*

⁴⁹ *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, p.81.

⁵⁰ Eagar to Bathurst, 6 November 1822, CO 201/111.

A view shared by Foveaux's biographer Anne-Maree Whitaker. See Whitaker, *Joseph Foveaux*, pp.7 and 123.

⁵¹ *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, p.147.

⁵² Eagar to Bathurst, 6 November 1822, CO 201/111.

Bigge's account of the role of the military in maintaining exclusion was contested by Eagar. Macquarie was a Colonel of the 73rd Regiment which had admitted some emancipists to its officers' mess. When Bigge discussed the contacts of Dr Redfern with this Regiment, he claimed the social blending was cosmetic and that Redfern was admitted 'by a change of regulation, but not of feeling in the military body.'⁵³ In dealing with the period, of which he did have some knowledge, Eagar attempted to add some nuance to the picture. The 73rd Regiment was replaced by the 46th in 1814, and Bigge claimed that the officers of the 46th (who had left the colony in 1817) had not mixed with the emancipists and clashed with Macquarie over their attitude.⁵⁴ Eagar suggested personal reasons for their behaviour, and claimed they had been 'influenced by some petty and private quarrels in the Colony'.⁵⁵ Eagar may have been exaggerating for an officer of the 46th had vaunted the Regiment's exclusive nature writing of 'that promiscuous class, which (with pride we speak it) have been ever excluded from intercourse with us.'⁵⁶ The dispute between the Regiment and the Governor over the matter had led Macquarie to send a despatch, heavy with emotion and capitalised letters, to the Duke of York, the most senior military officer, in July 1817. He criticised the officers for

Their Indiscriminate Rule of Exclusion, Entered into without any Knowledge of the Merits or peculiar Circumstances of the Individuals, I could not but Consider premature, Illiberal, and I may add, *Almost Unjust*, towards the Very few Whose Reformation of Manners, Combined with liberal Education and honestly Acquired Independence, had rendered them rather Meriting of Pity and Regret for their former Deviations from the Paths of Virtue, than of a perpetual Brand to disgrace their future Lives.⁵⁷

⁵³ *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, p.82.

⁵⁴ *Ibid.*, p.88.

⁵⁵ Eagar to Bathurst, 6 November 1822, CO 201/111, p.250.

⁵⁶ Sanderson and others to Molle, 13 June 1817, *HRA*, series I, volume IX, p.449.

⁵⁷ *Ibid.*, Macquarie to Duke of York, 25 July 1817, p.444.

The Governor's emancipated favourites hardly justified the extravagant pity. Macquarie went on to admit his desire to be a social reformer, and to make his 'Table the Rule or Standard for the Admission of Persons into Society'.⁵⁸

Bigge claimed the 48th Regiment (which replaced the 46th in 1817) were divided in their reactions: 'the general, but not the unanimous opinion of the officers, was against the admission of the obnoxious class to their society, on any terms.'⁵⁹ Eagar proposed that the superior officers were for the admission of emancipists while the junior officers were opposed.⁶⁰ Bigge argued that Macquarie erred in forcing the issue, rather than allowing it to evolve, and claimed that the officers of the 48th were obliged to attend the Governor's summonses to his tables where they were forced to mix with these emancipated convicts.⁶¹ Macquarie, in defending himself to the Colonial Secretary, took exception to this claim and in so doing also suggested a more blended society than Bigge's exclusionist analysis:

Commissioner Bigge's feeling of commiseration for the distress experienced by military officers and others, in meeting with persons *who had been convicts at my table*, might have been spared; as he well knew that all of them were in the habit of associating in the most familiar manner with a person who had been in similar circumstances, voluntarily and totally uninfluenced by any motive of deference towards me.⁶²

Bigge blamed the hostility that had flared at the highest levels of society between some emancipated convicts and some military and government officers during the Macquarie period to the Governor's belief that New South Wales was 'a convict colony; that it was established for their benefit'. He repeated the Sydney gossip that to get ahead with this Governor it was necessary to have been a convict.⁶³ Macquarie, according to Bigge, created tensions by forcing his chosen

⁵⁸ *Ibid.*

⁵⁹ *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, p.88.

⁶⁰ Eagar to Bathurst, 6 November 1822, CO 201/111.

⁶¹ *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, p.149 - 150.

⁶² Possibly a reference to Simeon Lord. Ritchie, *The Evidence to the Bigge Reports*, volume 2, p.281.

⁶³ *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, p.147.

emancipated convicts into Sydney society. The hostility which then arose originated, not because the principle upon which he acted was objected to, but from the means he used.⁶⁴

Eagar and Macquarie represented New South Wales as an ex-prisoners' colony but Bigge had not been impressed by such arguments. He found that the free settlers held both 'the moral ascendancy' and the best estates and the most cattle. Bigge also challenged the views of his opponents in his belief that the greatest improvements to the colony had been performed by the free emigrants.⁶⁵ Eagar also proposed that the colony had been more socially integrated than Bigge allowed. When he had written to Bigge in 1819 he had associated exclusion not with the military but with the older settlers.⁶⁶ Eagar now attacked Bigge as 'an Enemy'⁶⁷ of the emancipated convicts and suggested solid relationships existed between influential emancipists and free emigrants and gave examples. He claimed that Simeon Lord's 'House Table and Hospitalities' were taken by the civilian and military officers and other respectable inhabitants. Although in that case Eagar and Bigge were in agreement, for the Commissioner had described the magistrate Simeon Lord's immoral life yet allowed that 'no objection appears to have been made to an association with him by any other person than the Rev. Mr Marsden.'⁶⁸ Other emancipated convicts, and Eagar named Andrew Thompson, Richard Fitzgerald and the Reverend Henry Fulton, 'were always cordially received and mixed in the first Society of the Colony, and that the Houses and Hospitalities of other Individuals, whose names have not been mentioned by Mr Bigge were in like manner partaken of.'⁶⁹

⁶⁴ *Ibid.*, p.88.

⁶⁵ *Ibid.*, p.148.

⁶⁶ Eagar to Bigge, 19 October 1819, CO 201/132.

⁶⁷ Eagar to Bathurst, 6 November 1822, CO 201/111.

⁶⁸ *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, p.82.

⁶⁹ Eagar to Bathurst, 6 November 1822, CO 201/111.

Eagar argued that there had been associations between the two groups and that dissent had been introduced into their relations by the Commissioner himself:

whenever the education manners and conduct of an Emancipist Colonist fitted him for respectable Society, he was received into it without prejudice or dissatisfaction, until the arrival of Mr Bigge in the Colony, until by his influence example and conduct, a line of demarcation was drawn. Previously to his arrival amongst us, the acerbities prejudices and distinctions of former times, with the exception of a few individuals, the McArthurs [sic] Faction, were nearly worn down and extinguished.⁷⁰

Eagar accused the commissioner of making distinctions 'not according to real worth and Character, but according to Class and former condition.'⁷¹ He further accused him of suppressing details about the 1819 petition, which Eagar insisted had brought together emigrant and emancipist, to bolster his own picture of disharmony and that he passed over events in which 'Emigrant and Emancipist Colonists *did* unite and Coalesce not only in their private intercourse but also in Public and General Business'. To prove his claims of an integrated society Eagar cited examples of the Philanthropic Society 1815; the institution for the care of aboriginal children, the so-called 'Natives Institution' 1815; Bible Society 1817; Benevolent Society 1818 – all of which were supported by ex-convicts.⁷²

Eagar blamed Bigge for encouraging the Macarthur family, 'and a few retired Military and Civil Officers, to revive old prejudices and feelings' calling them 'a Faction who would alike rule the Government'.⁷³ William Wentworth had also applied the term 'faction' to the Macarthurs in the first edition of his book.⁷⁴ Eagar maintained that the divide between the free emigrants and the emancipated convicts was far less marked than Bigge had supposed: 'The great Majority of the Emigrants do *not* entertain such deep rooted prejudices, as is

⁷⁰ *Ibid.*

⁷¹ *Ibid.*

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ Wentworth, *Statistical, Historical, and Political* (1819), p.346.

evident from their continued and habitual Public and private intercourse with their fellow Colonists.’⁷⁵

Macquarie was defended by Eagar for helping to destroy the barriers: ‘The System of Governor Macquarie had not only merely reconciled, but almost buried in oblivion all prejudices and differences between these Classes.’⁷⁶ Describing the mischief of exclusion Eagar placed Bigge himself on stage as the principal actor. He ‘came amongst us as an Angel of Discord.’⁷⁷ Eagar blamed the Commissioner for creating distinctions: ‘until by his influence example and conduct, a line of demarcation was drawn’. Although Barron Field, who Eagar quotes as saying ‘being a felon once, constitutes a felon for ever’, had been responsible for unsettling society Bigge was blamed for the use the Judge had made of *Bullock v. Dodd*:

it spread from him to the Judges, by them it was introduced into the Courts of Justice, and ended in the attempt of these same Judges to subvert, not only the Character, but the property of that Class of Colonists who composed four fifths of the free population.⁷⁸

Eagar made seven charges against Bigge, especially that by ‘his conduct and example’ he ‘encouraged and extended’ discord between emigrants and emancipists.⁷⁹

After the publication of Bigge’s second Report, the aim of Eagar’s attack changed, or he had exhausted his bile on the Commissioner himself. When he wrote a second letter to Bathurst the following April (1823), Justice Field had become the focus for his disapproval. Partly repeating his previous attack on the Judge Eagar amended the words that Field had used against him in the Parramatta court room to the more pithy: ‘Delivering it as an axiom from the Bench, “*Convict once, Convict for ever.*”’⁸⁰ Again Eagar repeated his claim that the political division

⁷⁵ Emphasis as in original. Eagar to Bathurst, 6 November 1822, CO 201/111.

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ *Ibid.*

⁷⁹ *Ibid.*

⁸⁰ Emphasis as in original. Eagar to Bathurst, 3 April 1823, *HRA*, series IV, volume I, p.464.

dividing the small society was between the united emancipists and emigrants and a small faction. He again credited the policies of Governor Macquarie with having achieved this melding, until the good work was disturbed by the arrival of Bigge:

This general union and harmony between the Emigrant and Emancipist classes continued unabated and undisturbed until the end of the year 1819, down to which time they were cordially united in the formation, conduct, and management of every public measure and institution of the Colony.

Encouraged by Bigge, Barron Field allegedly had been the grit about which the tumour of factionalism had formed, while John Macarthur and his family were given their due as leaders of this anti-liberal and anti-emancipist party:

And then also it was the Judges, particularly Mr Justice Field, making the most active use of that influence, which their Station naturally gave them in so confined a Society, gathered round them a few other gentlemen, particularly the members and connections of a certain family, celebrated in the history of the Colony for their opposition to every Governor as well as every humane and liberal feeling, and formed a party determinedly hostile to the Emancipists and their hitherto undoubted, undisputed rights and priviledges [sic].⁸¹

Eagar suggested that the action taken by Field polarised two groupings, the two judges, the Macarthur family and 'only two Individuals'⁸², against the rest of the community. For the judge's actions 'united the whole body of the Emancipists, and the majority of the Emigrant Settlers, in a natural and determined resolution of seeking for relief and redress in all lawful and proper ways.'

Bathurst's instructions to Bigge had claimed that the 'Propriety' of admitting emancipated convicts into society was a dramatic colonial conflict, and that he would find many people hostile to the idea; Bigge's findings were formed by these instructions. Macquarie encouraged public change in the treatment of the emancipists. Privately the division had always been softened by personal arrangements. Some of the older social forces which opposed integration had been eclipsed. The Rum Corps was long gone and John Macarthur, whose name is

⁸¹ *Ibid.*, pp.464 – 465.

⁸² Presumably one was the Reverend Samuel Marsden.

invariably associated with social division, was absent from 1809 to 1817.

Governor Macquarie made the admission of emancipists to official society a public matter, offending military pride and the personal principles of Samuel Marsden.

In 1819 and 1820 Bigge, probing the matter as instructed by Bathurst, revisited old disagreements. By investigating division he made it important, and the manner of conducting his Inquiry encouraged a confusion of gossip and 'evidence'. Edward Eagar, perhaps honestly and perhaps for his own ends, made out that colonial society was less polarised and more assimilated. His argument may be plausible. Macquarie's difficulties in using his dining table and the magistrates' benches to force assimilation evoked noisy controversies which obscured the private social contacts formed between individuals. The further public role of emancipists in benevolent and religious societies, which Eagar evoked, indeed had substance. On one side exclusion, heavily underscored in the Governors despatches, on the other subtle, and less well documented, practical assimilation. The petition of 1819 drew emancipists and free emigrants together in a united form of political action. The Bigge Inquiry and *Bullock v Dodd* pushed the 'colonists' apart. They ensured that later political campaigns for trial by jury and representative government would always involve a discussion as to what part the emancipated convicts would play if those institutions were granted.

PART THREE

Governor Brisbane's legacy of division – 1825

Chapter Five

Newspapers and authorship

When the *Sydney Gazette* was the only newspaper in New South Wales its role in political affairs was circumscribed by its traditionally dependent relationship with the governor's administration. In 1824 it was joined by the *Australian*, and then the *Monitor* in 1826. Their arrival allowed the *Sydney Gazette* to escape from direct government interference, and the establishment of a free press. Serving a population infected with the newspaper habit, the papers rapidly became overactive participants in contemporary political debate. Newspaper proprietors were men of importance, and self-importance. Their long-lasting legacy is an often dubious chronicle of opinionated newsprint, from which histories (sometimes for lack of other source material) are erected. The editors entered the historical records, but not always the writers who contributed their letterpress. In the case of William Wentworth, a financial interest in the *Australian* has been turned into an unmerited reputation for journalism, while real writers of talent are ignored.

H.M. Green's 1935 study, *Wentworth as Orator*, suggests that the solid materials for discussing Wentworth's skill with words, and his political thought, are to be found in his speeches.¹ Assumptions of Wentworth's authorship of articles in the *Australian* are misplaced, for it is doubtful that he wrote much, if anything, for that paper.² Wentworth returned to Sydney in 1824 with a certain literary reputation. He had published a book on the colony in 1819, a new edition had come out in 1820, and as he was sailing towards New South Wales the third

¹ H.M. Green, *Wentworth as Orator* (Sydney, [1935]).

² In example see D.E. Fifer who, without supporting evidence, represents Robert Wardell as writing editorials and William Wentworth articles for the *Australian*. Fifer also attributes authorship of articles, published in 1824 and 1825, dealing with the Australian Agricultural Company to Wentworth. If this were so the material would be of great importance in building up a picture of Wentworth's political thought: but it must be based on conclusive evidence of his authorship. D.E. Fifer, 'William Charles Wentworth in Colonial Politics to 1843', MA thesis, University of Sydney, 1983, pp.85 and 88.

edition was being printed in London. In 1823 he had won second prize, for a work entitled *Australasia*, in a Cambridge University poetry competition. But even these works are a less certain base for discussing his literary talents and political ideas than they appear.

In the press slanderings of 1826 the *Sydney Gazette* attacked William Wentworth by inserting a 'scrap' of a letter from Robert Lathrop Murray.³ Having moved from Sydney to Hobart, Murray was described by Governor Arthur, who had suffered from his newspaper attacks, as 'the most able and most depraved Man living.'⁴ The loathing was mutual with Murray privately complaining that Arthur was 'starving the Settlers & ruining the Colony to fatten the wretched Crawlers who he has about him.'⁵ Another critic of Murray in the *Hobart Town Gazette* described him as 'a fabricator of falsehoods, and a maligner of family life.'⁶ He had been a military officer before being transported to New South Wales for seven years for bigamy. In Sydney he had been D'Arcy Wentworth's principal clerk in the Police Office, then Assistant Superintendent of Police. The two men were close friends, and Murray had named his country house in Van Diemen's Land after him.⁷ Earlier, Murray had been an obvious choice when officers of the 46th Regiment had looked about for the author of anonymous pipes lampooning them. He had only been able to evade legal charges when D'Arcy Wentworth admitted the offensive verses had been written by William, who was safely out of the way in England. Perhaps for this reason Murray honoured the father and abhorred the son. Spiteful and unreliable, Murray's letter attacked Wentworth's book (presumably the 1824 edition), and questioned his authorship of *Australasia*:

that farrago of compilation of bad geography, and irregular chronology, that trap clap of Macquarie, that useless mass of words, his book; but I mean his poem on Australia, which really contains some fine flights. But I know enough of universities to understand

³ *Sydney Gazette*, 3 June 1826.

⁴ Arthur to Hay, 12 March 1827, *HRA*, series III, volume V, p.588.

⁵ Murray to Wentworth, 5 January 1825, D'Arcy Wentworth Correspondence, ML A 754-1, p.230.

⁶ *Hobart Town Gazette*, 5 November 1825.

⁷ Ritchie, *The Wentworths*, pp.183 - 184 and p.147.

how easily poetry is to be purchased; and thanks to him (whom I have every reason, from grateful recollections and experience, to call the best of friends, and to know to be the best of fathers) the means of such purchase were never wanting. *There is not one single individual here*, who does not agree with me that there never was a more valueless production than this far puffed Australian.⁸

On being admitted to Cambridge Wentworth boasted to his father that he intended to win the university poetry prize, whose subject was 'Australasia'.⁹ That he received assistance writing the poem is a possibility, for the 'philosophical narrative'¹⁰ with its twenty footnotes, including those to Racine, *The Odyssey*, *The Illiad*, *The Prometheus* of Æschylus, *The Philoctetes* of Sophocles, *The Hippolytus* of Euripides, was 'prepared' in 'little more than three weeks'.¹¹ In the event he added to his English misfortunes by only receiving second prize. Wentworth was proud of the poem, and had it published with a dedication to Lachlan Macquarie. In the printed edition he described the work as 'the first fruits of Australasian poesy', a mischievous reference to Barron Field's 1819 book, *First Fruits of Australian Poetry*—a joke which Edward Eagar would have appreciated, and could have made.¹²

Between its title and contents there is some confusion, for the Australasia treated in the poem is not a large area of the South Pacific, but New South Wales (or perhaps New Holland). The title of the 1824 edition of Wentworth's book incorporates the word Australasia, and its usage suggests a more accurate geographic idea - *A Statistical Account of the British Settlements of Australasia; including the colonies of New South Wales and Van Diemen's Land*.

⁸ Emphasis as in original. *Sydney Gazette*, 3 June 1826.

⁹ William Wentworth to D'Arcy Wentworth, 18 March 1823, ML A756.

¹⁰ For the source of this phrase and a literary analysis of the poem and some suggestions of its sources see Robert Dixon, *The Course of Empire: neo-classical culture in New South Wales, 1788 – 1860*, Oxford, Melbourne, 1986, pp.128 – 135.

¹¹ Wentworth used the word 'prepared' when writing to his father, 'I think that I have in that time prepared a poem which will ensure me the Chancellor's Gold Prize. At least that is my expectation.' William Wentworth to D'Arcy Wentworth, 10 March 1823, ML A756.

¹² Although 'First Fruits of Australasian Poetry' had been the title of the anonymous reviewers article on Field's book in the *New Monthly* in 1821.

Australasia makes free with elements drawn from Wentworth's own biography. It offers a poetic delineation of his exploration of the Blue Mountains, which is anchored in fact, as he was amongst the first party of Europeans to cross the mountain barrier, but the early verses are a fanciful distortion of his upbringing. The setting is changed from Norfolk Island to Sydney and its harbour. Calling on 'The fading visions of my infancy' Wentworth makes Sydney the place 'where my playful childhood's thoughtless years/ Flew swift away'.

A modern historian, who finds the lines on this topic 'execrable', notes that not all colonial women possessed the 'innocence, inexperience, beauty and gentleness' which the poem allotted to them¹³ -

Thy blue ey'd daughters with the flaxen hair
And taper ankle, do they bloom less fair
Than those of Europe?

In the 1819 edition of his book Wentworth had made no mention of the explorer de Quiros (although he does appear in the 1824 edition), but in the poem the Spaniard becomes the 'first of Europe's roving train' to see 'this island-main'. Distorting history, the poem lands de Quiros on the mainland, until driven off by 'the hidden foe, the frequent spear'. This error was not commented on by contemporaries, or later writers.

In dealing with aboriginals the very odd line, 'No songs have ye to trace the time of old', is used. This could very well have been written by someone unfamiliar with New South Wales, for songs were one thing the aboriginals Wentworth encountered did possess, and he had referred to their 'traditionary songs' in his 1819 book.¹⁴ Robert Dixon, in a discussion of *Australasia*, notes that in the 1819 volume Wentworth dealt both briefly and in 'commonplace' terms with the aboriginals while the poem tends towards their extended depiction in

¹³ Grace Karskens, *The Rocks: Life in Early Sydney* (Melbourne, 1997), p.136.

¹⁴ Wentworth, *Statistical, Historical, and Political Description* (1819 edition), p.44.

terms pervaded by ideas of 'Cynic primitivism.'¹⁵ The greater interest in the aboriginals may be Wentworth's attempt to introduce picturesque elements into the poem, or even that a different writer was at work, influenced both by texts and visual illustrations. Dixon points out that Wentworth had referred readers of his book to David Collins (Judge Advocate and Secretary to Governor Phillip who published an account of the colony in 1798) for 'a faithful and minute account of them'.¹⁶

If Wentworth received help in writing *Australasia* the co-author(s) may never have seen the colony, for it could have been written using references easily found at Cambridge.¹⁷ And of course there were other men then in London who did know the colony and possessed some facility with a pen – Edward Eagar is a notable possibility. Robert Dixon has suggested some literary models and sources that may have been used, and he could have included parts of Wentworth's own third edition which were probably in manuscript at the time.

If other hands helped in the writing of *Australasia* the 'mays' and 'perhaps' disappear when dealing with the third edition of his book, which William Wentworth did not write. The source for this claim is Wentworth himself, in his introduction he informs readers that the text was written by another writer. The unnamed penman is given as a 'gentleman who has been many years resident in New South Wales'. Wentworth credits him as both compiler and, given that the work has been rewritten, its author:

under the immediate superintendence of this gentleman much of the present work has been compiled; as much, perhaps, has proceeded wholly from his pen. Whatever indeed of the present edition, may be deemed new and original matter, must, with little exception be taken to be of his contribution.¹⁸

¹⁵ Dixon, *The Course of Empire*, pp.130 – 135.

¹⁶ *Ibid.*, p.130.

David Collins, *An Account of the English Colony in New South Wales; with Remarks on the Dispositions, Customs, Manners, &c. of the Native Inhabitants of that Country ...* (London, 1798).

¹⁷ Robert Dixon has noted three paragraphs of Wentworth's 1819 edition (pp.88 - 89) which 'were the essential materials of a national epic expressed in prose'. If Wentworth did have the assistance of a collaborator he may have found these lines a particularly useful source. *Ibid.* p.128.

¹⁸ Wentworth, *A Statistical Account of the British Settlements*, (1824), p.vi.

The author was Edward Eagar. After Wentworth had sailed for Sydney Eagar wrote to Robert Wilmot Horton explaining that Wentworth had asked him to add various government documents to the work as an appendix.¹⁹ John Ritchie claims the book was largely rewritten by Eagar ‘perhaps with Redfern’s assistance’, though offering no evidence for the latter’s participation.²⁰

The new edition carried a new title – *A Statistical Account of the British Settlements of Australasia; including the colonies of New South Wales and Van Diemen’s Land: with an enumeration of the advantages which they offer to emigrants, as well with reference to each other, as to the United States of America and the Canadas: and directions and advice to emigrants*. The 1824 book expresses the hope that New South Wales will soon be changed ‘to the more worthy and suitable name of Southern Britain’.²¹ If this part of the manuscript had been written at the time of *Australasia*’s composition, and was used as a source, it may have prompted its last line, ‘A new Britannia in another world!’. It was a memorable line of verse which became a nineteenth and twentieth century cliché.

The new ‘edition’ was a substantial rewriting and expansion and, with the addition of extracts including a complete issue of the derided *Sydney Gazette* and Eagar’s pamphlet *Letters to the Rt. Hon. Robert Peel*²², the work grew into two volumes – little, apart from his name on the title page, remained of Wentworth’s 1819 book. The parameters of the society envisioned was an emancipist vision. If it is accepted that Edward Eagar wrote the third edition then, when his known writings are collected (his long letters to John Bigge and Earl Bathurst, and his

¹⁹ ‘Mr Wentworth having prepared a new edition of his book on New South Wales, which is now in the press, he requested me, previously to his departure to that Colony, to add by way of Appendix ...’: Eagar to Wilmot Horton, 5 June 1824, CO 201/155.

²⁰ Ritchie, *Punishment and Profit*, p.245.

²¹ Wentworth, *A Statistical Account of the British Settlements* (1824), pp.9 – 10.

²² [Eagar, Edward] By a late resident in those colonies, *Letters to the Rt. Hon. Robert Peel, M.P., Secretary of State for the Home Department on the advantages of New South Wales and Van Diemen’s Land, as Penal Settlements for the Punishment and Reform of Offenders, and as Colonies for the Reception of Poor Emigrants, with Plans, and Estimates of the Expense for the Emigration and Settlement of Persons of Small Fortunes, and able-bodied Paupers there* (London, 1824).

later letters published by the Sydney press), he stands out as a major emancipist writer, thinker, and propagandist.

Contemporaries were aware of Eagar's authorship.²³ In November 1824 Barron Field had met his enemy Eagar in London, and he wrote to Samuel Marsden blaming Eagar for the anti-Marsden comments in Wentworth's book. He suggested that legal action be taken as Eagar had

had libelled you in such a way in Wentworth's third edition, that I think you to right to *indict* Wentworth in the colony, if you can prove his acknowledgement of authorship, or selling a copy. He calls you a *hypocrite* over and over again. Now take my advice this time.²⁴

Marsden got the Sydney solicitor James Norton to write to Wentworth on 21 May 1825 asking if he was the author of the two volume edition. Wentworth replied two days later, 'I decline furnishing the information which the Rev. Samuel Marsden has sought through you.'²⁵ Unable to prove Wentworth was the author of the work Marsden was advised by the Attorney General, Saxe Bannister, to prosecute the English printer²⁶, but this plan collapsed when Barron Field passed on the news that he had gone bankrupt.²⁷ In the meantime Marsden composed his own pamphlet to answer the 'calumnies' made against him and sent it to England to be published.

Before leaving England William Wentworth applied, without success, to become the New South Wales Attorney General.²⁸ His book had not brought him the official employment he had anticipated. After moving to Cambridge he told his father that henceforth he would never hold a government position.

Also thwarted in his desire to become the Attorney General of New South Wales was a London lawyer, Dr Robert Wardell. He had owned a Whig

²³ Possibly in deriding the 1824 edition as 'that useless mass of words' Robert Lathrop Murray was knowingly attacking Edward Eagar.

²⁴ Emphasis as in original. Field to Marsden, 21 November 1824, Marsden Papers, ML A 1992.

²⁵ Samuel, Marsden, *An Answer to certain calumnies in the late Governor Macquarie's pamphlet, and the third edition of Mr. Wentworth's Account of Australasia* (London, 1826), p. 91.

²⁶ Marsden to Reverend J. Pratt, 24 June 1825, Bonwick Transcripts, ML BT Box 53.

²⁷ Field to Marsden, 27 February 1826, Marsden Papers, ML A1992, p.454.

²⁸ R.B. Walker, *The Newspaper Press in New South Wales; 1803 – 1920* (Sydney, 1976), p.6. Douglas Pike (General Editor), *Australian Dictionary of Biography*, volume II, (Carlton, 1966), p.570.

newspaper, the *Statesman*, and was acquainted with William Wentworth. When he applied for the colonial position, in February 1823, both he and Wentworth were at Cambridge – Wentworth at Peterhouse and Wardell in Trinity. Wardell had been a barrister of the Middle Temple for two years and was at the university to present for the degree of LL D. His supplication to the Colonial Office was annotated with an instruction to advise the ambitious lawyer that he had ‘no chance of being appointed’.²⁹

Wentworth was planning his return to New South Wales, and Wardell planned to accompany him to continue his legal career, and launch a new colonial newspaper, the *Australian*. The two disappointed lawyers associated as proprietors in the new venture. Wentworth was without journalistic experience and his role in the daily running of the paper is uncertain. He offered financial support, and his name was a valuable asset, as it was on the 1824 ‘edition’ of his book. It both introduced the unknown Wardell and guaranteed the seriousness of the undertaking. Wentworth’s connection with the *Australian* lasted twelve months, and his editorial influence during that time is unclear. All through that busy year he was setting up his own legal practice, overseeing the running of his landholdings, and enjoying a varied social life. For his partner the paper served as a base for articulating his myriad resentments, and making money. In Sydney Wardell would prove to be a successful lawyer, a prolix editor, and a victim of convict violence, but he was never a brilliant phrase maker.

The author of the 1824 book, knowing that the *Australian* newspaper was being planned in London as an adversarial newspaper to voice editorial grievances, had hinted at the future birth of a free press in the colony. The *Sydney Gazette* was denigrated, and the existing government control given as the reason why it

seldom contains any interesting matter ... Anything in the shape of political discussion is a novelty, which it is rarely permitted to

²⁹ Wardell to Horton, 28 February 1823, CO 201/147.

exhibit. An independent paper, therefore, which may serve to point out the rising interests of the colonists, and become the organ of their grievances and rights, their wishes and wants – is highly necessary; and, it is to be hoped will speedily be set on foot.³⁰

Even so, and perhaps to explain why a whole number was reproduced in the book, it was allowed that the paper 'still presents a very lively picture of the state of the colony, its disadvantages and prosperities, and the opinions and manners which prevail there.'³¹

When Wentworth returned there was no emancipist party in the colony. In his Report John Bigge had suggested the existence of an emancipist political clique, but (while calling them 'leaders') denied they led anybody. It was a point of view that would be supported by conservative critics of their noisy opponents:

I sincerely believe that the great body of the emancipated convicts do not partake of the ambition of their leaders, Mr Redfern, Mr Eagar, Mr Terry, and Mr W. Hutchinson; that they would be satisfied with protection from oppression and insult, and due encouragement in their undertakings; and that they feel great indifference about their admission either to public offices, or to any other rank in society than that which their own industry and good character will justify and naturally procure for them.³²

The confusion which arose after Judge Field invoked *Bullock v. Dodd* had led to Redfern and Eagar's departure from Sydney, in an effort to ensure the legal rights of the ex-convicts were placed on a sound footing.

When the *Alfred* sailed into Sydney in 1824 Wentworth had been absent for eight years. On the same vessel were Robert Wardell and his mother, a printing press for the *Australian*, Dr William Redfern and his wife, and the new sheriff John Mackaness. With these representatives of the law, the press, medicine, and justice, it was almost inevitable that they should arrive in a cloud of complaint, and the captain of the *Alfred* was sued by his illustrious passengers for the lack of comforts he provided. Wardell and Wentworth entered the colony bringing a lawsuit and bitterness, and the means to publicize them.

³⁰ Wentworth, *A Statistical Account of the British Settlements* (1824), p.20.

³¹ *Ibid.*

³² *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, p.153.

The *Australian* was begun without seeking the formal approval of the Governor, and one historian has written of Wardell's and Wentworth's 'audacity' in so doing.³³ The accolade is undeserved. There was no necessity for them to seek approval, and Governor Brisbane was aware of their plans before they began publishing, even promising them his *de facto* support. In June 1825 'The Editors' of the paper offered the Governor their compliments and reminded him of the promise he had made them 'previous to the commencement of their publication' to forward all government proclamations and orders to them for publication.³⁴ Without this agreement, and the flow of government materials, they would not have attracted or held readers.

When the new paper began publishing, the *Sydney Gazette* moved to rid itself of government control. Even before the *Australian* was established the colony was moving towards something of the kind. Robert Howe, who was in a position to know, referred some of the praise for the changes back towards Brisbane's Colonial Secretary:

it was not until Major GOULBURN became Colonial Secretary, that our Journal was liberated from insulting and grievous bondage ... With *his* arrival the Press began to assume a freedom to which it before was a stranger; the Major gave the first blow which relieved us from our shackles; but it remained for Sir THOMAS BRISBANE, not only to disencumber us of our galling yoke, but endeavour to obliterate all recollection of our former servile condition.³⁵

The idea that things were already changing is also captured in the compliment paid to Brisbane in his Farewell Address that he had 'opened, to fair and legitimate discussion, the columns of the Government Gazette, immediately after your arrival in the Colony.'³⁶ Freedom of the press was introduced in 1824 for those who owned the presses. Governor Brisbane, in an assertion of his usually

³³ Ritchie, *The Wentworths*, p.209.

³⁴ The Editors of the *Australian* to the Governor, Copies of Letters Received by the Governor, 13 December 1825 – 28 October 1825, AONSW 4/1618.

Carol Liston calls it 'implicit official recognition': C.A. Liston, 'New South Wales under Governor Brisbane, 1821 – 1825, PhD thesis, University of Sydney, 1980, p.422.

³⁵ *Sydney Gazette*, 10 October 1825.

³⁶ Address of farewell to Sir T. Brisbane, 26 October 1825, *HRA*, series IV, volume I, p.629.

unacknowledged role, claimed to have allowed it, in order 'to try the experiment.'³⁷

After the end of the censorship of the *Sydney Gazette* Chief Justice Francis Forbes explored the nature of the regulation which the government had exercised over it. He described that control as a 'proprietary right', which had originated in 1803 when the government provided both the printing press and the paper for the first colonial newspaper.³⁸ Governor King 'gave permission to an ingenious man, who manages the Government printing press, to collect materials weekly, which, being inspected by an officer, is published in the form of a weekly newspaper.'³⁹ Later J.T. Campbell, who had been Governor Macquarie's secretary, acted as government censor until he himself published a libel on Samuel Marsden. Commissioner Bigge's Report had praised his efforts 'in controlling the indignant or violent feeling of others.'⁴⁰ Forbes himself had earlier referred to Major Goulburn as 'the censor' during an 1824 libel case involving Robert Howe. During the trial some light was thrown on the way in which the government censorship was exercised:

The printer conceived that he was bound to publish what was approved and transmitted from the Colonial Secretary ... Such was the singular state into which the Anomaly of an Australian censorship had fallen – it was pleaded as an excuse and justification of libel.⁴¹

Twenty-one years later government control was exercised through a final approval over what was printed: 'in the course of business, the printer of the Gazette, used to forward his proof sheets to the colonial secretary, to see if there were any matter contained in them, which might not meet the views of

³⁷ Brisbane to Bathurst, 12 January 1825, Note reference to 'Doctor Wardle' [sic], *HRA*, series I, volume XI, pp.470 – 471.

³⁸ Forbes to Wilmot Horton, 27 March 1827 in Bennett, *Some Papers of Sir Francis Forbes*, p.159.

³⁹ King to Hobart, 9 May 1803, *HRA*, series I, volume IV, p.85.

⁴⁰ *Report of the Commissioner of Inquiry on the Judicial Establishments of New South Wales, and Van Diemen's Land*, pp.20 – 31.

⁴¹ Emphasis as in original. Forbes to Wilmot Horton, 7 November 1824 in Bennett, *Some Papers of Sir Francis Forbes*, pp.47 – 48.

government.' Now competing with the *Australian*, it was necessary for editor Robert Howe to obtain the removal of direct government interference.

Forbes made the point, in 1827, that Governor Brisbane did not repeal legal censorship for 'no such censorship ever existed.'⁴² There was no law or statute of press control weighing on New South Wales. Government censoring of the *Sydney Gazette* came from the paper's origins as a government sponsored gazette. When Wardell and Wentworth began publishing a competing newspaper they introduced a free press, but they did not destroy a non-existent legal censorship.

Lieutenant-Governor George Arthur, in Van Diemen's Land, which until the beginning of the Darling administration was controlled from New South Wales, suggested to Brisbane that the newspapers should be controlled by issuing them with licences, and offered the Governor a draft act: 'The occasion seemed to be very desirable, and I thought ought not to be missed; but Sir Thomas Brisbane took a different view of the subject ...'⁴³ Arthur's suggestion that the act be issued by proclamation on the Governor's own authority was questioned by Francis Forbes. The Chief Justice advised Brisbane that because a Legislative Council had not yet been established, the Governor lacked the power to make laws. Forbes suggested that Brisbane should take advice on the matter from Attorney General Saxe Bannister - although there was, he claimed, only one possible opinion on the matter and Arthur's suggestion was not acted on:

Unfortunately Sir Thomas Brisbane was apt to defer answering official letters, until he had forgotten his subject; and his Excellency appears to have replied to Col. Arthur, that he could not issue such a proclamation, as had been recommended, because it was contrary to the law of England. With the same unfortunate inattention to the matter before him, his Excellency took credit to himself for removing the censorship from the press, in imitation of the Marquis of Hastings in India, utterly disregarding the radical difference in the constitution and laws of the two countries, and overlooking the

⁴² Forbes to Wilmot Horton, 27 May 1827, *HRA*, series IV, volume I, p.720.

⁴³ Arthur to Hay, 12 March 1827, *HRA*, series III, volume V, pp.587 – 588.

facts that the Australian had been established, without asking his permission, and in opposition to his administration, for more than twelve months.⁴⁴

Brisbane allowed these colonial journals to publish without any controls, not even the stamp duty which was imposed on British newspapers – and the editors took full advantage of this freedom. In October 1825 a review article of Wentworth's 1824 edition in the *Quarterly Review* suggested the *Australian* was publishing inflammatory material, and should be terminated:

Of this journal we have seen some eighteen or twenty numbers. It is precisely what Mr Wentworth's work, now under review, would have led us to expect it to be – a vehicle for such opinions, and so expressed, that, for the peace of the country, it will probably, soon be found expedient to suppress it.⁴⁵

A polemic press was introduced unsystematically into a colony, where government direction and authority touched almost all aspects of the settlers' lives, and where over half the population were prisoners. The problems Governor Darling was to face in dealing with a strident oppositionist press had not been confronted by any of his predecessors, and would call for the greatest skill from his administration.

Both newspapers littered their columns with approval of the colony's possession of a free press. Yet this supposed boon was neither open to all nor did it attempt to represent all political opinions in the colony. The papers were in business to sell copies and advertising space. They offered their readers news, and inflicted editorial opinions which may have been no more than the political hobby horses of the editors and their friends. History recreated from their pages may not represent majority colonial concerns. They were a political force controlled and directed by their proprietors. Their editorials were polemics, the correspondence they published was carefully selected, and their news reporting was slanted. Not

⁴⁴ Forbes to Wilmot Horton, 27 May 1827, *HRA*, series IV, volume I, p.719.

In his *ADB* entry on Forbes C.H. Currey somewhat simplifies the matter by stating that Arthur's proposal went to Brisbane 'who on Forbes's advice declined to sanction it.'

⁴⁵ 'The Australian Colonies' in *Quarterly Review*, volume 32, October 1825, p.313.

unlike modern Australian newspapers, their liberal bias was not shared by mainstream opinion.⁴⁶ Objectivity was eschewed and they were viewed with tolerant distaste by many of their readers. The dates of publication may be accurate, but probably little else.⁴⁷ The political aims were chosen by the proprietors and propagandised by them. Repetition, the essential element of propaganda, played its part in forcing the governors and the Colonial Office to take these issues seriously. The possibility that the local press criticisms would be taken up by the British newspapers, or opposition members of parliament, made it essential that the Governor respond to their arguments in his despatches to his Colonial Office superiors. News and the interpretation of that news was used to influence public attitudes. Later, De Tocqueville described the same element in United States' newspapers:

The personal opinions of the editors have no weight in the eyes of the public. What they seek in a newspaper is a knowledge of facts, and it is only by altering and distorting those facts that a journalist can contribute to the support of his own views.⁴⁸

The conservative Henry Dumaresq, suffering from their enmity, charged the newspapers with manipulating news to turn the community against the government. Even as he argued that New South Wales was primarily a penal institution he acknowledge the existence of that shadowy thing 'Public Opinion':

It is a common trick with the Editors of the Opposition Papers to announce that certain obnoxious measures are contemplated by Government, and their Comments on these supposed intentions are always such as are calculated to excite distrust and alarm. The Public is kept for some time in a state of suspense and uneasiness; but, when it suits their purpose, these News Writers assert with the utmost effrontery that the intended measures have been abandoned in consequence of their Editorial stricture; and the

⁴⁶ The basis for this claim is a study which researched the political differences between journalists and the general public. The 'attitudinal tests' it used to explore conservative versus liberal attitudes indicated 'a major ideological gulf between Australian journalists and the general public': John Henningham, 'Ideological Differences between Australian Journalists and Their Public', *Press/Politics*, 3(1), 1998, pp.92 – 101.

⁴⁷ The evidence for this sweeping statement is offered throughout this thesis, where an attempt has been made to point to the conflicting differences in the factual material published by the newspapers.

⁴⁸ Alexis de Tocqueville, *Democracy in America*, volume one (New York, 1994), p.187.

Government is assiduously Complemented for Yielding to Public Opinion.⁴⁹

In New South Wales to progress, to be taken seriously, and to sell copies, the newspapers needed colourful examples of tyranny and injustice. Not all colonists were convinced that the state of the colony was as dismal as it appeared in the pages of the *Australian*. In June 1825, after the newspaper had been painting storm clouds and banging sheets of tin offstage for eight months the anonymous ACERBITAS published a letter to the *Sydney Gazette* which mocked Wardell's opposition:

One man's literary thunder is ever growling over the head of an indulgent Government, because it will not raise this Colony in a moment on a level with England on a ministerial and legislative point of view; verily, I believe, he wants an Australian Parliament!!!

...

Has not the Colony, under all the insinuated oppressions and deprivations of rights, flourished beyond expectation? ... Are we menaced by despotism? Then what is the extent of our sufferings? But this independent Whig wants to exalt our Colony, at once, to the climax of legislature, whence dazzled by sudden power it may retrograde to its former littleness.⁵⁰

Newspapers are about money. In October 1824 the *Australian* destroyed the *Sydney Gazette's* publishing monopoly. The immediate rivalry between the two papers was personal, political, and financial. The new paper brutally hacked into the revenue which the *Sydney Gazette* precariously raised, from tardy paying subscribers and advertisers. The newspapers bickered over many matters, but always for advertising and subscribers. Money inked the presses. Their competition and mutual abuse brought information to the settlers, a little of it even trustworthy, with strongly opinionated viewpoints, and entertainment. The continual colonial fights and squabbles were often at the margins of the settler's

⁴⁹ Henry Dumaesq, 'Reflections suggested by the Address voted at the late Public Meeting in New South Wales and some Proceedings subsequent thereto', CO 201/187. Further discussion of this document appears in Chapter Sixteen and a full transcription is given in Appendix Five.

⁵⁰ *Sydney Gazette*, 9 June 1825.

lives – if they were not themselves involved. The comment of young John Lawson, the son of William Lawson, to his brother in England was probably not uncommon: ‘We have a deal of squabbles in the Government lately, that we leave to fight out themselves.’⁵¹ The clashes the newspapers encouraged and chronicled salted hard working daily life with new friendships, feisty enemies and, paradoxically, a sensing of community.

Colonial life was always riven by feud and dissension, with amusing gossip to enliven the days and nights. The intensity of the feelings and the clashing of forces, piddling more than titan, performed an important part not in fragmenting this society but in creating a new community. Petty and major dissension between individuals was sometimes dissolved, even temporarily, by common interests or new and shared hatreds. Intense and longstanding enmity could be resolved by a carefully staged handshake or a raised glass.⁵² The visitor de Bougainville misunderstood what he was seeing when he suggested that hatreds and dissension ‘undermine the stability of the society.’⁵³ The sound and fury camouflaged the very real community which existed and was itself a unifying force within the new world. Confrontationalist politics were (and remain) an element binding the new society.

The *Australian* was Whig/radical and oppositionist. When they appeared before him in March 1825 Francis Forbes described the two barrister newspaper proprietors as ‘Gentlemen of very respectable legal talents and knowledge, but, a little inclining against the powers that be.’⁵⁴ The *Sydney Gazette* published on Mondays and Thursdays, the *Australian* once a week on Thursday. For every blow delivered by the *Australian* the rival paper was able to return two. For advertisers the *Sydney Gazette* offered additional opportunities for selling their goods with the

⁵¹ John Lawson to Nelson Lawson, 8 May 1824 in William Beard, editor, *Old Ironbark: Some unpublished correspondence (1817 – 1824) from and to William Lawson Explorer and Pioneer of Veteran Hall, N.S.W.* (Sydney, 1967), p.35.

⁵² See in example the enmity between George Boyes and William Balcombe - letter to his wife, 8 May 1825: Chapman, *The Diaries and Letters of G.T.W.B. Boyes*, p.229.

⁵³ Rivière, *The Governor's Noble Guest*, p.155.

⁵⁴ Francis Forbes to R. Wilmot Horton, 24 March 1825, ML A1819.

knowledge that readers were seeing the paper if only to read the government notices which were first published by it before appearing in the columns of its rival. Seemingly stridently opposed they were only divided by the loudness of their voices calling for the same objectives: trial by jury, an elected assembly and both with emancipist participation. The *Sydney Gazette* did this by supporting government, and the *Australian* by opposing it. In adopting, and advertising, this attitude towards government, the *Gazette* offered itself as an easy target for contemporaries (and historians) who chose to see it as a compromised and embarrassing follower:

They involve contradiction, absurdity, servility and the most despicable sycophancy: and we conceive must unavoidably excite the contempt of the very Government, of whom the Editor professes himself, the “*thro’ thick and thin Champion!*”⁵⁵

Wardell’s editorial opponent at the *Sydney Gazette* was Robert Howe. He was the son of the printer, and convicted shoplifter, George Howe who had begun the paper. A strict Methodist, he became editor when his father died in 1821.⁵⁶ His *Sydney Gazette* was liberal and pro-government, acting as the government printer and publishing the Government Orders. The paper attacked the old colonial oligarchy, represented by John Macarthur, and supported government authority, while arguing for trial by jury and a colonial house of assembly. It was a difficult policy to follow, and easily mocked. Above its columns was the patriotic motto ‘Advance Australia.’

The rivalry between the papers was vituperative, and entertaining for outsiders. The *Australian* was never uncertain in its attitude towards the older paper and

resolved to maintain that dignified silence so much superior to a contest with a coarse adversary ... we will for once ... waive our superiority, as a gentleman sometimes stoops to thrash a dustman,

⁵⁵ Emphasis as in original. *Gleaner*, 16 June 1827.

⁵⁶ R.B. Walker, *The Newspaper Press in New South Wales, 1803 – 1920* (Sydney 1976), p.3. *ADB*, volume I, p.558.

when the fellow purposely bespatters him with the filth of his cart.⁵⁷

The two papers even shared the same enemy, the Faction, except when, for their own purposes, they came to an arrangement with John Macarthur and supported him. Consistency was not their strong point. Robert Wardell was a pragmatic opportunist. With its patriotic name his *Australian* was published for a colonial and English readership. Both papers were conscious of English influence, for power finally resided not in the leaky Government House on the shores of Sydney Cove but in the Westminster Parliament and offices of Downing Street. Influencing the decision makers in London was the essence of colonial politics and seldom overlooked.

When Wardell published attacks on the old settlers he was hating at second-hand. Newly arrived, he took over festering antagonisms that had come into being years before. Robert Howe and William Wentworth were of the first generation to have grown up in the colony. Howe was the son of a convict, William Wentworth was the privileged 'son' of a rich free settler, and one of his convict mistresses. When they abused the Faction it was always vivid, and always personal. They knew, closely, the people they delineated as the 'junta' and the 'aristocrats.' Their hatreds of Macarthur were their own, and their fathers'. They both had long memories of Macarthur and the ways of the colony, long memories and well developed animosities. Wardell hated on principle, and because it was good for business, Wentworth and Howe hated from experience. When business intervened Wardell could divert his paper to support any rich man or cause, even Macarthur.

On 19 May 1826 the two newspapers were joined by the *Monitor*, another radical journal. It was conducted by two partners; edited by Edward Smith Hall and printed by Arthur Hill. Its name was provocative, holding threatening republican echoes of the French Revolution's *Moniteur*, a liberal newspaper

⁵⁷ Quoted by H.M. Green in *A History of Australian Literature*, volume one, p.78; *Australian* 16 September 1824. This dating is impossible as the *Australian* only began publication in October 1824.

established during the Revolution which then changed its views depending on the changes of government.⁵⁸ For settlers and government officers who had spent much of their lives fighting French troops, and French ideas, it was an uncomfortable assertion of incipient French chaos. On its masthead were agricultural implements (Hall was a failed farmer), a dog, a caduceus, and a single unblinking eye above the motto 'Nothing Extenuate Nor Set Down Aught in Malice.' Hall arrived in the colony in 1811 and had been a landholder, business man, philanthropist, and cashier and secretary of the Bank of New South Wales.⁵⁹ In a colony where he was surrounded by self-made men, financial success had always eluded him.

Barron Field commented to Samuel Marsden that Brisbane was 'silly' to allow an uncontrolled press: 'the idea of freedom of the press in a vast penitentiary! One might as well permit a radical newspaper to be published in Newgate'. Like other contemporaries, he judged the newspapers by their editors:

I look upon Mr Hall's newspaper to be ten times worse and more dangerous than Wentworth and Wardell's. Poor vermin Howe's is so ill-written that nobody can read it, and it is perfectly innocuous; but Hall is a hypocrite – Wardell is an open, honest free thinker and man of this world – very baneful in such a community and among such a rising generation, and a fit subject for censorship of the press in such a state, but Hall is the man to foment rebellion in the Colony, and would prostitute the name of religion as [well? manuscript torn] as liberty.⁶⁰

The views would have been shared by other contemporaries. Howe ineffectual, Wardell a troublesome influence, but Hall the real danger.

Articulate and prolific, these editors were not the authors of all the articles published by their newspapers, though they have been written of as if they were: 'Until he voluntarily vacated its editorial chair on 27 June 1828, Wardell was the *Australian*.'⁶¹ Wardell was not the *Australian*, but he was the pen behind the

⁵⁸ John Paxton, *Companion to the French Revolution* (New York, 1988), p.139.

⁵⁹ *ADB*, volume I, p.500.

⁶⁰ Written before news of Sudds and Thompson, and the subsequent newspaper outpourings, had reached England. Field to Marsden, 13 March 1827, ML A 1992.

⁶¹ C.H. Currey on Robert Wardell in *ADB*.

editorials. In their attacks on each other the newspapers used the editor's name as a simile for their journal, but their actual writing roles were probably limited to the editorials and additions and deletions to the words of their correspondents and reporters. Little is known of the men who wrote the mass of unsigned letterpress. Their identities were made a mystery, for anonymity was a safeguard from litigation. Saxe Bannister attempted to break through the obscurity in proceeding for libel against charges made in a 'leading Article' in the *Sydney Gazette*. He 'instituted prosecutions against the Author, if given up, and, if the Author be not given up, against the Proprietor of the Newspaper, Mr Howe.'⁶² Ambiguous authorship also disguised the legal status of the authors, for either convicts, or ticket of leave holders, may have had some role in the writing. The title, used by the journals, of reporter, suggests that the position was a paid one, in contrast to the correspondents who provided unsolicited material. Mentions of the names of the newspaper staff are scarce. In 1825 William Kelly was mentioned by the *Australian* as being a pressman (printer) at the paper and A.E. Hayes, who was later to become its editor and publish strongly anti-Darling material, was noticed as being a young man 'who has the care of subscribers' names.'⁶³ Later the *Australian* simply named 'Taylor', without other details, as being their reporter.⁶⁴

Amongst those vague figures is the clearer outline of a major colonial writer. Laurence Hynes Halloran, often referred to as Reverend Halloran, Dr. Halloran or Dr. Gregory, was a teacher, a forger, a synthetic clergyman, a poet, and a controversialist both in Cape Colony and New South Wales.⁶⁵ He arrived, as a convict, in 1819 and was involved with the press until his death in 1831. This

⁶² Saxe Bannister to Darling, 16 October 1826, *HRA*, series I, volume XII, p.669.

⁶³ *Australian*, 20 October 1825.

⁶⁴ *Australian*, 15 July 1826.

⁶⁵ Kelvin Grose, 'Dr. Halloran – pioneer convict schoolmaster in New South Wales: a study of his background' in *Australian Journal of Education*, volume 14, 1970, pp.303 – 324;

Kelvin Grose, 'Dr Halloran's secret life at the Cape', in *Quarterly Bulletin of the South African Library*, volume 41, Number 4, June 1987, pp.145 – 158;

Laurence Halloran, *Laurence Hynes Halloran: Genealogical Surrounds* (Sydney, 1990);

Robert Ross, *Status and Respectability in the Cape Colony, 1750 – 1870: a tragedy of manners* (Cambridge, 1999), pp.43 – 44.

irritable⁶⁶ forger and family man was for a time in 1827 the publisher of a short-lived newspaper, the *Gleaner*. His authorship of newspaper poetry in Australia has been acknowledged, but his political writings, and his changing newspaper allegiances, have attracted little academic ink.⁶⁷ He was well known to contemporaries for his newspaper activities and a friendly letter from Governor Brisbane, which Halloran made use of at least three times, referred to him as 'a public writer.'⁶⁸ Halloran played an interesting part in fomenting colonial altercations. In an incident when Robert Wardell threatened the *Sydney Gazette* with legal proceedings, because of a letter written by Halloran, Robert Howe scraped together an acceptable apology to extricate himself, commenting ingenuously: 'only we cannot help remarking, that libels were scarcely heard of before the *Australian* came into being.'⁶⁹ Awaiting transportation in 1818 Halloran published a book of poems entitled, for obvious reasons, *Newgate*. In one of them, 'My Own Epitaph', he drew a sympathetic self-portrait:

Here rests at length, by Heaven's kind will,
 "A strange Compound of Good and Ill;"
 Who little rest enjoy'd on Earth,
 Doom'd, from the era of his birth,
 Griefs and Vicissitudes to know -
 Some Comforts, but more Cares, and Woe!
 Tho' not a *Saint*, (Truth now may speak,)
 He was less vicious far, than weak!
 His Course, oft steer'd by Passions strong,
 By sad fatality was wrong;
 Yet, to Philanthropy inclined,
 His heart embraced all Human Kind!
 And tho' he felt Ingratitude,
 Which still his thorny path pursued;
 Tho' persecuted, wrong'd, betray'd,

⁶⁶ *Monitor*, 26 May 1826.

⁶⁷ For Halloran's poetry see Elizabeth Anne Webby, 'Literature and the Reading Public in Australia 1800 – 1850: a study of the growth and differentiation of a colonial literary culture during the earlier nineteenth century', PhD thesis, University of Sydney, 1971.

⁶⁸ Halloran used this letter from Brisbane at least three times. It was quoted in the *Sydney Gazette* 12 December 1825 and copies of it accompanied his letter to Earl Bathurst on 2 February 1827, *HRA*, series I, volume XIII, pp.68 – 69, and to Huskisson, 7 April 1828, CO 201/197, p.544. The letter to Huskisson includes some creative Halloran biographical fictions.

⁶⁹ *Sydney Gazette*, 23 June 1825.

None ever vainly claim'd his Aid!
 To Woe, even to the last sincere,
 He gave, (all else was lost,) a *tear*!
 And, to Life's close from its beginning,
 "Was still more sinn'd against, than sinning!"⁷⁰

His enemies, of whom he had many, would only have disputed the final line.

While Halloran's writing career may be rediscovered, other important figures, such as the author of the *Australian's* police reports, remain unknown.

The introduction of an opposition press produced trenchant criticism of the government and individuals, and libel cases, threats of libel cases, and occasional duels. Ownership of a printing press offered a weapon for involvement in political issues and for voicing the personal animosities which flourished in the colony. The newspapers present a poverty of views, for objectivity was eschewed and reports were distorted to comply with editorial tastes. For the offended parties, grumbling letters to friends, memoranda to the Colonial Office, legal suits, or silence, were the usual means of responding. Governor Arthur, with some reason, noted: 'It seemed to me but reasonable that a free constitution should precede a free press.'⁷¹

The ownership of the *Australian* raised issues of abuses of power and questions of partiality in reporting. Governor Brisbane was aware of the abuses from the beginning, yet did nothing to curb them, and left the possibility of immense problems for his successor. During the *Almorah* case Brisbane wrote to Earl Bathurst commenting on the lawyer newspaper proprietors' lack of accountability for their reports:

I fear he [the ship's captain] has allowed himself to be misled by his legal Advisers Dr. Wardle [sic] and Mr W. Wentworth, who, unfortunately, are not responsible for any opinion they give, or act arising from it, and whose report of it in the "Australian" of which they are the Editors, is stated to me by the Attorney General to be grossly inaccurate.⁷²

⁷⁰ L.H. Halloran, *Newgate* (London, 1818), pp.55 - 56.

⁷¹ Arthur to Horton, 14 September 1825, *HRA*, series III, volume IV, p.367. In this letter Arthur expresses his belief that Brisbane removed press censorship.

⁷² Brisbane to Bathurst, 4 March 1825, *HRA*, series I, volume XI, p.533.

The liberal Chief Justice Forbes glossed over the matter when he wrote to Under-Secretary Robert Wilmot Horton and compared the local paper to the most important opposition paper in England: “The Australian”, the Morning Chronicle of New South Wales, keeps us all in high order.⁷³ Forbes was in a position of some influence over the two lawyers, and was well treated in the *Australian*. Copies of their articles extolling him accompanied his letters back to London.

Mixing the business of newspaper proprietor and lawyer brought Wardell and Wentworth further criticism. In 1825 Laurence Halloran published some political barbs in the *Sydney Gazette*. Halloran attacked Wentworth behind the pen-name ARISTIDES, an Athenian statesman known as ‘the Just’, who was ‘famous for his rectitude, patriotism, and moderation’.⁷⁴ The lawyer took offence, and refused to continue acting for Halloran in a legal matter. Halloran published Wentworth’s letter rejecting his business in the *Sydney Gazette*, and complained that his son-in-law Francis Shortt had been similarly treated. Wardell had been acting for Shortt in another case and, after reading some anonymous letters in the *Sydney Gazette*, had assumed they were written by him and refused to continue as his lawyer. Halloran confessed to being both ARISTIDES and the author of the letters which had offended Wardell. In his open letter to Wentworth he drew attention to the obvious:

This is a declaration due to you, Sir; but I feel it equally due to the Public, and to myself, to remark on the glaring impropriety of the union in one person, of the duties of an Advocate, and of a [sic] Editor of a public Journal; unless indeed, a client be prepared to sacrifice his opinions on matters of public interest, and general policy, as well as legal questions, to those of his low agents or solicitors.⁷⁵

Anonymous letters, prejudiced editorials, slanted reporting fill these spirited collections of self-promotion, politics and advertisements and yet they are

⁷³ Francis Forbes to R. Wilmot Horton, 24 March 1825, ML A1819.

⁷⁴ M.C. Howatson editor, *The Oxford Companion to Classical Literature* (Oxford, 1989), p.54.

⁷⁵ *Sydney Gazette*, 16 June 1825. This was written before Wentworth broke his formal association with the *Australian*.

often the only historical sources – and there is a danger of confusing puff and public opinion.⁷⁶ The editors, Howe, Wardell and Hall, had all learnt Sheridan's lesson:

puffing is of various sorts: the principal are, the puff direct – the puff preliminary – the puff collateral – the puff collusive, and the puff oblique, or puff by implication. These all assume, as circumstances require, the various forms of Letter to the Editor – Occasional Anecdote – Impartial Critique – Observation from Correspondent, or Advertisement from the Party.⁷⁷

The colonial newspapers were opinionated, verbose (and yet sketchy where we would like to know more), and often inaccurate. They did not represent all political groupings or interests, and the strong Tory and conservative strands of thought present in the colony were generally un-represented. A band of men produced the words that were published, and of most of them not a lot is known. William Wentworth, who wrote little, has been praised for the work of others; Edward Eagar and Laurence Halloran, who both wrote a great deal, merit deeper critical attention. Having created themselves as a free press the newspapers experimented with their powers, and attempted to force political change. They struck out at enemies, challenged the governor's authority, and determined the political agenda. In the 1820s they created two major disputes, the dinnerist crisis of 1825 and the Sudds-Thompson Case of 1826. The first of these took place as Governor Brisbane was preparing to leave the colony.

⁷⁶ A writer in the *Gentleman's Magazine* in 1766 offered a description of newspapers which equally captures the jumbled confusion of the colonial papers - 'pages of unconnected occurrences, consisting of politics, religion, picking of pockets, puffs, casualties, deaths, marriages, bankruptcies, preferments, resignations, executions, lottery tickets, India bands, Scotch auctioneers and quack doctors ...': cited in Jeremy Black, *The English Press 1621 – 1861* (Thrupp, 2001), p.vii.

⁷⁷ Act One, Scene Two: Richard Brinsley Sheridan, *The Critic or A Tragedy Rehearsed* (New York, 1960 [1779]), p. 137.

Chapter Six

The beginning of the Dinnerist Crisis

In late 1825 Governor Sir Thomas Brisbane was preparing to leave New South Wales. He had been governor since 1821, and was disappointed that his term of office was being brought to an end. A departing governor was a suitable target for platitudes and conventional forms of leave-taking. Brisbane's farewelling turned into a politicised conflict, for it presented an opportunity for certain individuals to capture his future political support, and to embarrass and frustrate their local opponents. As settlers offered him their over-excited backing, and flattering parting addresses, a sensitive, slighted Governor courted healing public opinion. In so doing, Governor Brisbane created a 'crisis', which would have repercussions on the succeeding administration.

Contemporaries found Sir Thomas Brisbane an unusual man, who made a dull and undynamic governor. First contacts impressed neither subjects nor visitors. On 6 May 1824 George Boyes, a newly arrived Commissariat officer with an acerbic pen, described him in a letter to his wife as 'a great fool.'¹ Next day a young visitor to Government House in Parramatta scratched his own impressions of the vice regal couple into his journal: 'Sir Thomas has a peculiar manner Lady is rather an odd person too.'² Visiting Sydney, as commander of a French fleet, the baron de Bougainville and his officers were taken on a four hour promenade about the grounds of Government House in Parramatta by the Governor - the visitors had difficulty in holding back their laughter as the great man loped about collecting insects.³ He was an ex-military officer distinguished in star gazing and bug catching, and less interested in the chrysalis-like transition of the colony from penal establishment to free settlement. Francis Forbes, in a

¹ Letter to his wife, 6 May 1824: Chapman, *The Diaries and Letters of G.T.W.B. Boyes*, p.187.

² Edward Dumaesq journal entry, 7 May 1824, AOT NS 953/371.

³ Diary entry 18 August 1825, Rivière, *The Governor's Noble Guest*, pp.105 – 106.

backdoors correspondence with the Colonial Office, criticised Brisbane for his 'disinclination for business.'⁴ When it was learned he had been recalled Forbes praised and deplored his departing superior:

He is a most amiable and honorable man – but not exactly fitted, either by habit or inclination, for the duties of a Governor of this young continent – requiring all the energies of a very able head, a willing heart, and an exhaustless body, to sustain them.⁵

Brisbane, though aware of the problems of the colony, had accomplished little in solving them. In August 1825, during a long conversation with de Bougainville, he offered his guest his views on the colony. The analysis of the inadequacies of the 'administrative infrastructures' was pertinent, and (if de Bougainville was correct) Brisbane's grasp of statistics was colourful, if inaccurate:

The biggest problem, in his view, is that in the last ten years the colony has grown both in size and importance beyond all expectations. This has posed serious problems for the authorities and has exposed how irrelevant and ineffective the administrative infrastructures are. The emancipated settlers cannot sit on a jury and yet, they now form one of the wealthiest classes. There is general discord in the colony. The ratio of 300 [sic] men to one woman is a serious problem.⁶

The ebbing of his administration left great challenges for his more competent successor to deal with.

In September the *Sydney Gazette* had appealed to letter writers to 'be so obliging as to await till times become more dull'.⁷ Times were seldom dull in the colony, and rarely less than in October and November 1825 as Brisbane was preparing to leave. Resenting his recall, he blamed any odium which had attached itself to his name to mischievous reports going to Downing Street from influential individuals, and especially from the Macarthur family.

Brisbane had been an odd choice for Governor. He wanted the position and the Duke of Wellington had spoken to Earl Bathurst on his behalf. The

⁴ Forbes to Wilmot Horton, 14 August 1824 in Bennett, *Some Papers of Sir Francis Forbes*, p.40.

⁵ Forbes to Wilmot Horton, 6 February 1825 in Bennett, *Some Papers of Sir Francis Forbes*, p.51.

⁶ Diary entry 22 August 1825, Rivière, *The Governor's Noble Guest*, pp.108 – 109.

⁷ *Sydney Gazette*, 22 September 1825.

Secretary of State was aware of Brisbane's scientific interests and turned him down, writing to Wellington 'that he wants one who will govern not the heavens but the earth in New South Wales.' Wellington persisted and informed Bathurst of Brisbane's capabilities, even that he had acted as timekeeper and 'kept the time of the army' during the Peninsular War.⁸ This may not have been the most likely attribute possessed by a New South Wales governor but he gained the position. It was now believed in New South Wales that an even more unlikely situation was awaiting him in England. It seemed that he was changing from Botany Bay potentate to parliamentarian. As the Brisbanes were packing their bags the *Sydney Gazette* reported that their governor could become a member of Parliament:

Should His Excellency Sir THOMAS BRISBANE be so fortunate as to reach home, prior to the Election of Members for the New Parliament, it will be very possible that Sir THOMAS BRISBANE will be returned for a seat in the House of Commons.⁹

The qualifying 'very possible' was easily overlooked. Perhaps the rumour came from Government House because no denial was published. If so, it was the castle building of a disappointed man dreaming of ways to rebuild his reputation. A continuing career in Parliament would have offered him the chance of both restoring and enhancing his name. The news diverted people's attention from interesting thoughts about the incoming governor and back to Brisbane, especially when the paper also suggested that he would become the champion of New South Wales in the House of Commons.

Sir Thomas Brisbane had not been a popular governor but, when it was known he was leaving, and when it was assumed that this was because of Macarthur family machinations, his popularity grew. Francis Forbes told Wilmot Horton that 'as soon as he was recalled, and it was known that charges affecting his private character had been circulated in England, there was a strong reaction in his favor.'¹⁰ Brisbane himself courted a late esteem in the colony to fabricate a

⁸ [Sir Thomas Brisbane] *Reminiscences of General Sir Thomas Brisbane* (Edinburgh, 1860), p.43.

⁹ *Sydney Gazette*, 6 October 1825.

¹⁰ Forbes to Wilmot Horton, 26 November 1825 in Bennett, *Some Papers of Sir Francis Forbes*, , p.88.

facade of public support before he faced his probable critics in Downing Street. A vulnerable man, hurt by his recall, he showed the colonists his unhappiness.

Brisbane was not the most sensible of men. Sir John Jamieson, no friend of the governor, had taken the baron de Bougainville aside to describe Brisbane as being 'too weak, too stingy and possesses a very limited education.'¹¹ The possibility that he would take a place in the Parliament was taken seriously, for surely some even more eccentric men already sat there. That this ineffectual, sometimes laughable Governor, could have a voice at the centre of power was a serious proposition for the Whigs and liberals of New South Wales. Brisbane could become, if not a pillar, then a supporter of the Whig opposition and would fight their liberal political causes. Brisbane himself appeared to be offering the emancipists his support in London. Suggesting a degree of co-operation between Government House and the editorial office, the *Sydney Gazette* proposed that in future Brisbane would become the emancipists champion in the House of Commons, and gave their source as the Governor himself:

His EXCELLENCY has often remarked, and that to numbers, that the Emancipists of New South Wales have never given him any trouble, or afforded his mind one anxious care; and He has also repeatedly avowed, not for the purpose of publication, that their best interests He will feel it His privilege and duty to espouse and advocate in another equally eminent, and not less useful sphere.¹²

This late in his administration the emancipists had little for which to thank Brisbane. Macquarie had turned four of the ex-criminals into magistrates and allowed some to place their well shod feet beneath the Government House dining table. Following the Bigge Report Bathurst had advised Brisbane to treat the matter cautiously. Bathurst saw the need for encouraging men in their

¹¹ Diary entry 10 August 1825. The governor is not referred to by name but masked by the initials G.B.. In an editorial note Rivière suggests this could be either Governor Brisbane or Gregory Blaxland. As the passage deals with 'the main personages in the colony' and goes on to complain that 'he holds neither a gathering at his house nor a dance and does not even celebrate the birthdays of the members of the royal family', I am assuming that G.B. is Governor Brisbane. Rivière, *The Governor's Noble Guest*, p.95.

¹² *Sydney Gazette*, 6 October 1825.

reformation but, to avoid the controversies evoked by Macquarie's appointments, instructed the Governor not to appoint any of the emancipists to the magistracy. Instead suitable ex-prisoners, chosen for their abilities and 'private character', should be appointed to government positions. Doing so, suggested Bathurst, would tend to unify colonial society - 'if a due selection be made on fit occasions and at proper intervals from the Class of free convicts to fill civil situations, the two parties may ultimately be blended together'.¹³ Brisbane noted the appeal for caution, and did little for the emancipists during his governorship. Now in the lees of his period of office he was being represented as their champion.

In October the *Australian* feted its first year of publication, annoying Robert Howe by boasting that they were out-selling the older paper.¹⁴ After losing his monopoly when the lawyers began publishing Howe was aware that a third newspaper, the *Monitor*, would begin operating during 1826.¹⁵ Around the time of its anniversary, Howe's *Gazette* revealed that William Wentworth was withdrawing from the *Australian*.¹⁶ What his role over the year had been is uncertain and there seems no evidence that he ever wrote for it. As the paper never told its readers of the changes in ownership the exact date of his separation from it is unknown.¹⁷ Writing later, in March 1829, about events in December 1826, Wentworth commented that at that time 'my Public Connexion with "the Australian," it was notorious, had long ceased.'¹⁸ This news may have broken suddenly for, in the same issue in which the *Sydney Gazette* revealed the news of his separation, another article referred to Wardell and Wentworth as 'Proprietors of the Australian.'

¹³ Bathurst to Brisbane, 29 July 1823, *HRA*, series I, volume XI, pp.91 – 92.

¹⁴ *Australian*, 6 and 13 October 1825.

¹⁵ *Sydney Gazette*, 13 October 1825.

¹⁶ *Sydney Gazette*, 10 October 1825.

¹⁷ Statements linking Wentworth with the *Australian* after this break are not uncommon. See for example, 'In a leading article published in the *Australian* in 1826 Wentworth again ...' in Portia Robinson, *The Hatch and Brood of Time* (Melbourne, 1985), pp.179 – 180. Grace Karskens attributes a report in the *Australian* on 29 August 1828 to Wentworth: Grace Karskens, *The Rocks: Life in Early Sydney* (Melbourne, 1997), p.136. Similar claims naming Wentworth as the author of articles published during his known period of proprietorship are also doubtful.

¹⁸ Darling to Murray, 28 May 1829, *HRA*, series I, volume XIV, p.825.

That same month, Wardell acted against Howe in the Supreme Court in the case of *Mitchell v. Howe*.¹⁹ It was possible, if both parties agreed, for the matter to be decided by a jury. Both Wardell and Howe were champions of trial by jury, but Wardell refused to allow the case to be heard by one. As they faced each other in court Howe mocked his rival in his paper. He claimed that when in need of political material Wardell drew on bound back numbers of the *Statesman*, his London newspaper, which he kept close at hand with his legal books. Howe also decried the *Australian's* ambiguous principles, charging it with changing sides when expedient, and of having gone over to the “dominant aristocracy” which has ever been the bane of the Emancipist, and of every well-disposed and liberal Emigrant.²⁰ Francis Forbes also observed of the paper’s errant ethics. He noted the complementary activities of lawyer Wardell and editor Wardell who, in both capacities, had been acting in the interests of the Reverend Samuel Marsden and Hannibal Macarthur, ‘two of the patriarchs of the Colony’. As he did so he reminded his Colonial Office correspondent that possession of a printing press did not guarantee a corresponding possession of public opinion. When he himself received newspaper praise the Chief Justice was seldom as skilled at recognizing ‘editorial vapor’:

the present editor of the *Australian*, Dr Wardell, was retained by Mr McArthur [sic] to conduct the prosecutions against the magistrates, and to defend the prosecutions about to be commenced against himself. Hence the Dr’s columns were rather warm in the cause of his client ... the recourse that was had to newspaper misrepresentation, is part of the system. The learned Doctor’s forces, with his client’s letters in front, and his *soi-disant* ninety-nine hundredths of the people in his rear, might make a very respectable shew in England. Here they amount to nothing more than a lawyer, his client, and an editorial vapor.²¹

¹⁹ For reporting of this case see the *Sydney Gazette*, 10, 13 and 20 October 1825, and the *Australian*, 13 October 1825. A useful transcript of *Mitchell v. Howe*, with well documented footnotes, is also provided by the Macquarie University Law Department in their internet project *Decisions of the Superior Courts of New South Wales, 1788 – 1899*; <http://www.law.mq.edu.au/scnsw/html>

²⁰ *Sydney Gazette*, 10 October 1825.

²¹ Forbes to Wilmot Horton, 30 October 1825 in Bennett, *Some Papers of Sir Francis Forbes*, p.84.

Howe despised Wardell but was fascinated by Wentworth, and retained some sympathy for him. The *Sydney Gazette* had been friendly towards Wentworth and its columns had been plundered in putting together both the 1819 and 1824 editions of his book. Personal bitterness tinged Howe's references to Wentworth: 'And did we not try to court the esteem of him, previous to his arrival; who, in return for our consideration, judged us worthy of his profound contempt?'²²

The affair of the governor's departure was changing from the mundane to the political. A week after suggesting it was possible Brisbane could be elected to the House of Commons the *Sydney Gazette* editorialised on what 'the loyal and affectionate inhabitants of New South Wales would have Him do for them when He reaches that Senate, of which we have little doubt Sir THOMAS BRISBANE is destined to become no ordinary member.' Firstly, trial by jury. Secondly,

that He will exert his powerful influence in abolishing that hateful line of distinction which is yet existant as the demarcation between the Emancipist and the Emigrant:- to the former it is unnecessarily painful; and to the latter, it is in the utmost degree odious. We are aware, however, and so is HIS EXCELLENCY, that some Colonists would have the line of separation, upon a broader scale; but we do live in hopes, that Sir THOMAS BRISBANE will be instrumental in knocking down this uncalled-for barrier.

Third came 'the immediate establishment of a House of Assembly in these Colonies.'²³ Emancipist rights were sandwiched between the other two. If the jury system and a colonial assembly were granted to the colony they would have forced the making of decisions about the civil liberties of the emancipists. The colonial liberals desired these two institutions but did they want them only with emancipist participation, or would they have accepted them, if offered, on the same basis as they existed in Britain? The depth of their radicalism was shallow, self-serving, and with limited aims. The historian Alan Atkinson has defined a

²² *Sydney Gazette*, 10 October 1825.

²³ *Sydney Gazette*, 13 October 1825.

colonial radicalism 'which aimed at enlarging traditional rights rather than replacing them with more abstract ones.'²⁴

Since its foundation the *Australian* had joined the move for trial by jury. In early 1825 Chief Justice Forbes, who supported its introduction, without emancipist participation, was cynical about the newspaper and its campaign. For Wilmot Horton, Forbes made a distinction between newspaper puff and real public opinion, and pointed towards the real problem – were the emancipists to be allowed to participate if trial by jury was introduced?:

I will only add, that whatever you may hear, the question in itself does not disturb the minds of more than a score of persons in this community – that the passing interest which it seemed to excite, is fast retarding – and that in a few short months, it will be forgotten.

We were told by the printer-advocate [Dr Wardell] that it was "convulsing the colony from one end to the other". This is false. The advocates were to receive a hundred guineas if they could persuade the judge that they were greater lawyers than Coke and Hale – and the "printers" laboured in the cause of the advocates – but the body politic of the Colony remained as peaceful and unconvulsed as in the brightest days of its prosperity. It is that upon turning to the Commissioner's [Bigge's] Report on the Judicial Establishments (pages 38 – 39) you will find the opinions collected on the *questio vexata* of trial by jury. Yet in no one instance does the true practical question itself, which is whether convicted persons are legally competent to sit on juries – and, if so, whether free men would sit with them – and, if not, whether it would be expedient to make them competent by express law – and under what limitations – for as a sweeping proposition I do not think it would be advisable to admit convicted persons, altho' pardoned, on juries.²⁵

Forbes's admission that he was against the presence of emancipists on juries may have surprised the Sydney liberals, and the newspaper editors who praised him in their columns. Forbes indicated that 'the true practical question' was the involvement of the emancipists, and it is this point which is sometimes absent from the newspaper arguments. Possibly their articles on this matter were

²⁴ Alan Atkinson, 'Time, Place and Paternalism: Early Conservative Thinking in New South Wales' in *Australian Historical Studies*, volume 23, No. 90, April 1988, p.18.

²⁵ Forbes to Wilmot Horton, 6 February 1825 in Bennett, *Some Papers of Sir Francis Forbes*, p.55.

intended for their English readership for whom the three words 'trial by jury' would have an emotional and traditional hold. Trial by jury meant one thing in Britain, and could be quite another thing in Sydney. It was a difference that was perhaps better not explained too clearly for an English readership.

The possibility of having Brisbane as an influential friend in the House was tantalising. But to influence him before he left the colony it was important to move quickly. The *Sydney Gazette* advised readers that the emancipists were planning to present the Governor with a farewell address. Yet, when an advertisement for a public meeting to vote the address was published the organisers were listed as D'Arcy Wentworth, William Wentworth, G. Blaxland, W.J. Browne, Thomas Raine, Thomas Macvitie, A.B. Spark, Alexander Berry – none of them emancipists.²⁶ The list may have been produced to hide emancipist involvement or it may represent a purely free settler initiative. Possibly the matter was deliberately made confusing by the organisers.

News of the planned address sparked a reaction. In the following edition of the *Sydney Gazette* an advertisement advised settlers that the 'Gentlemen of the Colony' were now planning a farewell dinner for Brisbane on 31 October. Because of the limited numbers for the occasion tickets were to be confined to heads of families.²⁷ Forbes later named 'Mr John McArthur and his friends' as the organisers and claimed that the dinner was being prepared in order to avoid offering Brisbane an address, which might have polarised opinion in the colony.²⁸

Dated Sunday and published the following day, the 'Gentlemen's' dinner advertisement was a response to the initiative taken by Wentworth and his co-signatories. Its contents had been leaked to their opponents, for immediately below their announcement appeared another attacking their dinner plans, and proposing to give Brisbane a second farewell dinner. Amongst the signatories for

²⁶ *Sydney Gazette*, 13 October 1825.

²⁷ The advertisement is dated 16 October: *Sydney Gazette*, 17 October 1825.

²⁸ Forbes to Wilmot Horton, 26 November 1825 in J.M. Bennett (editor), *Some Papers of Sir Francis Forbes*, Parliament of New South Wales, Sydney, 1998, pp.88 - 89.

the competing meal was William Wentworth. The first dinner was opposed for being exclusionist, for keeping out the poorer emancipists and the free emigrants. It

excludes not only every Emancipist, through their Incomes ... but also Numbers of Emigrants of the most respectable Description. The Emancipists, therefore, having resolved on giving His Excellency Sir THOMAS BRISBANE a dinner also, not excluding the Emigrants, and for this Purpose a respectful Request to His Excellency is prepared to obtain his indulgent Acceptance.²⁹

Now there were two dinners for the Governor.

William Wentworth and Robert Wardell championed emancipist rights but in 1824 Laurence Halloran had queried, in verse, how deeply these egalitarian principles actually ran:

And tho' a strong stand has been made in their cause,
By young Mr. Wentworth, and famed Dr. Wardell:
They must know, tho' they precedents quote from the laws,
Their liberal precepts, and practice accord ill.

For, which of these Lawyers, whom Envy calls "Owls,"
Would himself yield the point, they so earnestly dwell on;
(A point, on which virtue indignantly scowls)
To sit down, like "Macquarie," and dine
T [sic] with a felon?³⁰

Brisbane, not renowned for active participation in Sydney's social life, was to receive an address from his subjects and was facing the possibility of having to eat two farewell dinners. Forbes claimed the governor accepted the invitation to the gentlemen's dinner without knowing 'that there were to be any exclusions beyond the necessary line of respectability – at least New South Wales respectability, which so far differs from English respectability, that Convictism alone will not tarnish its character.'³¹ The exclusions surprised contemporaries yet the historians' fiction of exclusive versus emancipist would suggest that a wall

²⁹ *Sydney Gazette*, 17 October 1825.

³⁰ L.H. Halloran, 'Extract from a letter from "Jack Vainspun", at Sydney, New South Wales, to his cousin, "Dolly Free love" in London, Forwarded 29th December, 1824': *Gleaner*, 16 June 1827.

³¹ Forbes to Wilmot Horton, 26 November 1825 in Bennett, *Some Papers of Sir Francis Forbes*, pp.88 - 89.

of exclusion already existed. If this were accurate, why did these exclusions generate heat? If the emancipist/emigrant barriers were less distinct than has been claimed then where did the real lines of social divide lay? In this controversy it may be that what was objected to was not the exclusion of the emancipists, but the exclusion of some of the free settlers.

The second party of 'dinnerists'³² assembled a president, vice-president and six stewards. Emancipists William Redfern and Simeon Lord were president and vice-president. Rank was asserted and William Wentworth was listed first, and was the only one granted the honorific Esq. The lesser stewards were a mixing of free emigrants and emancipists: Mr E.S. Hall, Mr W. Hutchinson, Mr D. Cooper, Mr R. Cooper, Mr S. Levey.³³

Into these events a military gentleman landed from the *Philip Dundas* on 12 October. Lieutenant Colonel Henry Dumaresq had sailed from the Isle de France on 4 August and when he stepped ashore at Sydney Cove he looked, like all arriving immigrants, up George Street which pointed towards the enticing and promising 'countries unexplored'³⁴ With dinner conflicts burning in front page advertisements the *Sydney Gazette* was almost breathless in its editorial announcement - 'Colonel DUMARESQ is arrived.' The arrival of the new Governor's Private Secretary, and his brother-in-law, signalled that change was about to occur. The top men of the colony, and their wives, families and retainers, were about to be reshuffled as a new first family and new men at the top were about to enter and take their places.

Henry Dumaresq was immediately granted a place on the peak of the social heap. A veteran of the Great War and a Waterloo hero he spoke Spanish, and carried about some Spanish books in his baggage. He carried his past with him for a Frenchman's ball, fired at Waterloo, was lodged in his body. While the colonists were reading Scott he was a figure of romance whose exploits in the

³² *Ibid.*, Forbes to Wilmot Horton, 26 November 1825, p.89.

³³ *Sydney Gazette*, 17 October 1825.

³⁴ In example see map accompanying Wentworth's 1824 book.

battle were recorded in Scott's writing.³⁵ His family not only had an interesting looking foreign name but could trace their roots back through Jersey into France of the thirteenth century. The name was distinctive and even the pronunciation, *du-merrick*, had to be learnt. To an as-yet-uninvolved newcomer the squabbles and the confusion of dinners were trivial and unimportant. The *Sydney Gazette* gave him their advice: 'Keep away from parties dedicated to keeping old arguments alive, let these things 'die a natural death.' Only, the journal beseeched, read their files for the last year 'and his mind will become gradually enlightened.'³⁶ What could all this stuff mean to Dumaresq? The colonial bickering was absurdly unimportant. He was the first arrived and had much to learn, two Government Houses to make ready for the Darling family, and a whole new land with immense possibilities was spread before him.

Before the public meeting the *Sydney Gazette* strove for a well supported event: 'Now is the time to come forth, oh, ye Inhabitants of Australia, or for ever hold your peace!.' Backroom preparations were being made and William Wentworth had organised his contribution. The *Sydney Gazette* dropped heavy hints that something unusual was being prepared: 'If the Colonists were only in possession of the same information with which we happen to be acquainted, not a free inhabitant, and Reader of our Journal, could possibly absent himself.'³⁷

The gentlemen's dinner advertisement was repeated, and the *Sydney Gazette*, and while accepting their money, criticised the organisers for their exclusions. But it was not the exclusion of the emancipists which was most resented but the exclusion of the nebulous friends of the emancipists. As usual, the ex-convicts did not speak for themselves but were spoken for:

Leaving the Emancipists out of the question, for they have no wish to thrust their heads into any company where they would be unwelcome, since all that they require are their rights, and the

³⁵ Walter Scott, *Paul's Letters to his Kinsfolk and Abstract of the Eyrbiggia-Saga* (Edinburgh, 1834 [1815]), p.126.

³⁶ *Sydney Gazette* 17 October 1825.

³⁷ *Sydney Gazette*, 20 October 1825.

common civilities due from man to man – we say, leaving the preponderating class of the community entirely out of the scale, we should be glad to know, why those highly respectable Emigrants, who happen to be attached to the interests and causes of the Emancipists, should be excluded from meeting the GOVERNOR at this important crisis?

The paper drew links between the two classes and wrote of the 'avowed interest which identifies the enlightened Emigrant, and the honest Emancipist, as brethren.'³⁸

Just for a moment an anonymous correspondent in the Sydney Gazette diverted attention towards Ralph Darling by offering the new governor some practical advice. As the storm raged about Brisbane's farewell the new governor, like his Private Secretary, was advised not to be led astray by party.³⁹

Brisbane was in an awkward situation and Forbes wrote, after the events, that the Governor met a deputation from 'the other party' (Wentworth's group) and explained that if he accepted their invitation 'it would be misunderstood and misrepresented – that it would be placed, on his part, to the account of seeking popularity, and on theirs of obtaining his suffrage in favour of their political views.'⁴⁰ The Governor outlined exactly what was taking place. A seeming compromise was reached whereby the honour of the second group of dinnerists would be satisfied, and their entertainment cancelled, if only their six stewards (no emancipists) were invited to the gentlemen's dinner. Justice Stephen was instructed by Brisbane to write to the organisers of the gentlemen's dinner asking them to invite William Wentworth and his five companions. The Governor

³⁸ *Ibid.*

³⁹ Letter signed *PHILO UMBRAE*. The author was identified by John Macarthur as William Walker. *Sydney Gazette*, 20 October 1825; John Macarthur, CO 201/179, p.230.

For William Walker see – James Colwell, *The Illustrated History of Methodism, Australia: 1812 to 1855, New South Wales and Polynesia: 1856 to 1902* (Sydney, 1904); Don Wright, Eric G. Clancy, *The Methodists: A History of Methodism in New South Wales* (St. Leonards, 1993); Don Wright, 'The First Wesleyan Mission to the Aborigines of New South Wales: A brief Historical Note' in *Church Heritage*, volume 4, no.1, March 1985, pp.245 – 253.

⁴⁰ Forbes to Wilmot Horton, 26 November 1825 in Bennett, *Some Papers of Sir Francis Forbes*, pp.88 – 89.

would have been wise to have taken heed of the advice offered by the *Sydney Gazette* to Henry Dumaresq, 'Keep away from parties.'⁴¹

⁴¹ *Sydney Gazette* 17 October 1825.

Chapter Seven

Personal vituperation and constitutional reform

Brisbane's compromise could also be seen as an ultimatum. He had little good will towards the men offering him their select company for dinner, and little reason to feel obliged to John Macarthur and his friends. There was also no advantage for William Wentworth to sit down surrounded by fellow colonists amidst mutual detestation and expressions of insincere goodwill towards the Governor. Macarthur was keen to silence political rumblings, Wentworth to shout from the top of the highest inn.

Concerns that the public meeting to discuss Brisbane's Address would be used for political ends accounted for some of the absences from the Court House meeting on Friday 21 October 1825. Francis Forbes, while allowing that 'Some of the most respectable persons in the Colony were parties to the address', suggested that 'One side will represent the meeting as composed of rabble; the other will exalt it into the united wealth and respectability of the Colony. The truth lies between.'¹ Both John Macarthur and historian Manning Clark fulfilled Forbes's expectations. Macarthur represented the event as an emancipist rally while Clark, choosing the very word selected by Forbes, wrote inventively of the 'drunken rabble who had shouted themselves hoarse applauding the Wentworth malice.'² Clark gives his source as the *Australian* of 27 October 1825, from which both the drunks and the rabble are absent. Forbes's words were not entirely prescient. When he wrote he was aware of the efforts being made by John Macarthur to present an opposing point of view to London, and he had read the

¹ Forbes to Wilmot Horton, 26 November 1825 in J.M. Bennett (editor), *Some Papers of Sir Francis Forbes*, Parliament of New South Wales, Sydney, 1998, p.89.

² C.M.H. Clark, *A History of Australia II: New South Wales and Van Diemen's Land 1822 – 1838*, Melbourne University Press, Carlton, 1968, pp.59 – 60.

newspaper reporting in which great care was taken, perhaps to impress English readers, to highlight respectability:

A more respectable meeting was never before held in the Colony of New South Wales; all who attended were not only free inhabitants, but they were also men of more or less property, and some of them possessing an income from £2,000 to £4,000, £8,000, £10,000, £20,000, and even as high as £23,000 per annum.³

The meeting opened with the presentation of an address by the free emigrant Alexander Berry. It was moved and seconded by another free emigrant, W.J. Browne, and accepted by the meeting. A tactful document full of the usual compliments for the Governor, it offered him special thanks for a free press and wished him health and 'safe arrival in His native land.' The *Sydney Gazette* denigrated it as 'a mere effusion of gratitude' but it was approved by the men who were present. Then William Wentworth, whom the *Gazette* said 'performed his part nobly', introduced a quite different document.⁴ In more normal times (were there ever normal times in New South Wales?) a bland and suitably appropriate farewell would have been appropriate to farewell a somewhat bland and even occasionally ridiculous Governor. The belief that Brisbane was about to be changed from a gubernatorial nonentity into an opposition Member of Parliament intoxicated the settlers. Or at least some of them.

Wentworth was blunt and offensive. He adopted the adversarial manner, which enlivened his political oratory and made him a formidable barrister. That first address became 'a mere milk and water production'. Wentworth revealed that he, and other unnamed men, had prepared a rival document. Before reading it he touched on other matters. His language was brutal, hurtful, and insulting. He directed his malice towards a specific group of people: 'snug coteries, these family parties'; 'These gentry'; 'this faction.'⁵ It was familiar and repetitive colonial insult. He attacked the old order, represented by the ageing John

³ *Sydney Gazette*, 24 October 1825.

⁴ *Ibid.*

⁵ *Australian*, 27 October 1825.

Macarthur, and belittled the organisers of the gentlemen's dinner. He suggested, and his argument was endorsed by Francis Forbes, that their dinner had only been arranged to keep the Governor from receiving an address from all the colonists. Wentworth was speaking before the organisers of the first dinner had answered the Governor's request that he and others be invited. As John Macarthur and his associates were being asked to compromise, Wentworth ridiculed and insulted them. He also gave Brisbane extravagant and unjustified praise by linking his name with the sainted Macquarie, and slanted the facts to suit his rhetoric: 'these are the only two Governors who were not exclusionists, and on that account they were to leave the Colony without the customary tribute of regard.'⁶ Wentworth misleadingly made it seem that the only point of colonial conflict was between emancipists and a group he now named the 'exclusionists'.

The emancipists, said Wentworth, were the 'tiers etat of the Colony.'⁷ Behind the phrase lurked the *Marseillaise*. Radical praise and Tory fear. This mention of the third estate evoked memories of French Revolution, French horrors, French wars. It was an easy way to annoy his rivals. Wentworth was a member of the privileged orders toying with the language of revolution. To the generation born within the period of the French Revolution the rhetoric of revolution and terror was a familiar bogey. The convicts, those men in the pre-emancipist stage of colonial society, were ignored. The criminals found no place in his words for they existed outside the political structure he wished to build.

During his speech Wentworth's 'yellow snake' escaped into the history books. Through a misunderstanding of what he said the myth of the 'exclusives' in Australian history has been built. When first born the yellow snake was both singular and a specific reference to the small political group around John Macarthur, which contemporaries referred to pejoratively as the Faction. The definition of faction given by James Madison in *The Federalist Papers* emphasises the

⁶ *Sydney Gazette*, 24 October 1825.

⁷ *Ibid.*

negative aspect of the term and, matching contemporary Sydney usage, catches the sense of a group acting against the greater interests of the community:

By a faction I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.⁸

The birth of Wentworth's snake was reported differently in each newspaper. Their minor differences distorted subsequent historical analysis. The *Sydney Gazette* printed Wentworth's words in direct speech:

This is the faction which is the bane of the Colony! (Hear!) This is the yellow snake; but I sincerely hope, that this day's meeting will deprive him of his venom and his fangs! (Reiterated Applause!) There may be individuals amongst them, respectable in private life; but as a party, I express hostility, deadly hostility, to them; as a party, I shall ever detest them. (Applause!)⁹

The *Australian* published his words in indirect speech, and changed the emphasis:

It was high time that this faction should be annihilated; and happily the period of their extinction could not now be remote. They were the yellow snakes of the Colony. – (Cheers;) but that day he hoped would deprive them of their venom and their fangs. – (Continued cheering.) He, for one, possessed deadly hostility towards them, and would oppose their measures as a party whatever he might think of them as men.¹⁰

In the *Australian's* reporting the snake multiplied. In the *Sydney Gazette's* singular it was the Faction, in the plural it became the members of the Faction with 'their venom and their fangs.' For historians and lexicographers, it has grown to become that nebulous thing the 'exclusives', a term which, it has been claimed, encompassed all members of the upper classes, and opponents of democracy in general. The dictionaries are wrong. If their definitions of exclusive were accurate then many of the cheering or applauding men present at this meeting were themselves exclusives. William Wentworth's 'yellow snake' had a precise

⁸ Alexander Hamilton, James Madison, John Jay, *The Federalist Papers* (New York, 1961 [1788]), p. 78.

⁹ *Sydney Gazette*, 24 October 1825.

¹⁰ *Australian*, 27 October 1825.

meaning. It was the Faction, a small, wealthy and influential group. In 1819 Wentworth had used the term to refer to those 'who with a very few exceptions were composed of the civil and the military, and of persons who had belonged to these bodies formerly.'¹¹

In his harangue Wentworth coined a new word. He turned the verb exclude into a noun. Exclude had been used as a verb as some people excluded others from their presence. Mockingly, Wentworth called the members of the Faction, and only those men, the 'exclusionists'.

Brisbane's recall, and the rumour that he could become a member of the House of Commons, offered Wentworth, and his shadowy clique of supporters, the possibility of using him to back their case for constitutional reform in London. The farewell Address would be presented to the Colonial Office by Sir Thomas himself and if it contained political matter he would be on hand to offer supportive comments. The lure was attractive, and Wentworth offered the meeting a political document to replace that first address of banal politeness. In doing so he drew attention to his own political motives. Thoughts of the ending of the 1823 Act and the possibilities of implementing change through a future Act of Parliament for the governance of the colony were in the air. Wentworth acknowledged this, indicating his political thinking and future plans. In essence his words were a repetition of a repetition. Trial by jury and a representative assembly were seen as British traditions which the reformers wished to have passed from the metropole to the colony. The settlers claimed these rights as their inheritance, their patrimony.

These institutions, so familiar within the political rhetoric and traditions of Britain, were changed by distance and the peculiar social condition of the colony. If those emancipists possessing sufficient property qualifications (for universal suffrage was not part of the liberal demands), had been offered a complete return of the civil liberties they had forfeited then Wentworth, and the unknown men

¹¹ Wentworth, *Statistical, Historical, and Political Description* (1819), p.347.

co-operating with him, were planning change not encompassed by those familiar terms of British political rhetoric. The emancipists outnumbered the free settlers. New South Wales could have changed from a prison colony to an ex-prisoners' colony. With civil rights they would not have had in Britain the emancipists would have had the opportunity, if capable of acting as a political block or party, of taking effective power. John Hirst has written that

Wentworth was by English standards a liberal, but in his hands liberalism assumed a more frightening aspect in the colony than it did in England ... There was to be no bar to ex-convicts being voters or members which bore the appearance of being "liberal", but given the small numbers of the emigrants, the emancipists would have the overwhelming influence in an assembly.¹²

If constitutional reforms had taken place at this time power could have rested with that 'prepondering class' the emancipists, and the first Australian ruling class would have been ex-convicts and their users/supporters. John Hirst has highlighted the linkage between trial by jury and representative government in the contemporary campaigns for civic rights, 'The reason why the emancipists petitioned for civil juries was not that they were being treated unjustly, but as part of the campaign to secure an elected assembly in which they would be the prominent force.'¹³ All colonists desired trial by jury - were they not Britons after all? - but not if this resulted in corrupt jurors distorting justice in favour of convicts and their fellow emancipists, nor if it was a step towards an emancipist dominated assembly.

In his fear of the political dominance of the emancipists John Macarthur's attitude was not unreasonable. He had been present in New South Wales from the earliest times and had good reason to be fearful of power passing to an ex-convict party. Macarthur's political ambitions were interesting, but ambivalent. His own rebellion against Bligh, and his perpetual guerrilla warfare waged against succeeding colonial Governors, hardly made him a convinced supporter of the

¹² Hirst, *Convict Society and its Enemies*, p.163.

¹³ J. B. Hirst, 'Or None of the Above' in *Historical Studies*, October 1987, p.521.

status quo. But to transfer authority from the Governor and England to an Assembly dominated by ex-criminals was unthinkable. In the twentieth century few, if any, convicted criminals were knowingly elected to either Federal or state Parliaments.

The emancipists, and their civil rights, appeared at the forefront of public debate, but whether this was the situation or whether they and their claims were propagandising elements in the arguments of the colonial liberals is unclear. If William Wentworth was counting numbers he was supporting the most numerous group in the colony.

After the abuse, Wentworth presented the meeting with a second, very different, Address to replace the first. John Macarthur claimed it had been written by E.S. Hall, the future editor of the *Monitor*, a man Macarthur described as 'living by his wits'.¹⁴ The new text praised Brisbane for the mildness, impartiality and firmness of his administration. He was hailed for the introduction of freedom of the press: 'it was given at least without being asked for, which nobly shews the liberality of his mind, and how thoroughly English are his feelings'.¹⁵ The governor was also credited with opening the columns of the *Sydney Gazette* to 'fair and legitimate discussion' when he arrived in the colony. The inclusion of this detail suggests Robert Howe had been involved in its composition.¹⁶

The possibility that Brisbane was to become a Member of Parliament was hinted at, and he was asked to take any opportunities to press the government for the immediate establishment of trial by jury and taxation by representation. The Address attempted to manipulate the Governor by suggesting that he and the colonists were in agreement on these matters: 'We are not ignorant that, upon both these subjects, Your Excellency's opinion has long been accordant with the general opinion of the Colony.' In seeking a representative assembly the Address stated that this should consist of one hundred members in order 'to prevent the

¹⁴ John Macarthur, CO201/197, pp.230 and 232.

¹⁵ *Sydney Gazette*, 24 October 1825.

¹⁶ Address of farewell to Sir T. Brisbane, 26 October 1825, *HRA*, series IV, volume I, p.629.

influence of party faction'. In these proposals the most important matter, the legal status of the emancipists, was not mentioned.

Attacked by Wentworth, his enemies were also denigrated in the Address. The usual small group with 'rank and wealth' and 'very great influence at home' were targeted as civic rights were held up as the great cure for colonial ills. 'Trial by Jury universally diffused' was to put an end to the political dissensions it claimed had been created by Barron Field and Commissioner Bigge, and an elective assembly was suggested for bringing a more comprehensive understanding of society into local law making.

When Wentworth had finished Robert Wardell stood, and proposed an amendment. He objected to the inclusion of political material in the Address and suggested the references to trial by jury and taxation by representation be withdrawn. If a close association is assumed between William Wentworth and Robert Wardell then the latter's amendment surprises. As editor of the *Australian*, and friend of Wentworth, it would have been expected that he was involved in the preparation of the new Address or, at the very least, have been aware of its contents before the public meeting. But Robert Howe had more knowledge of the behind the scenes preparations, as his hints in the previous edition of his paper had shown.

Wentworth opposed Wardell's amendment. He defended the Address and, in words that undermined his supposed personal respect for Brisbane, spoke of his intention to use the departing Governor:

I care not what reception he may meet with at Downing-street; I dare say it will be scurvy enough; (Hear, hear!) but it should be so, that will be the very means of attaching him more firmly to our cause; it will convert him from a lukewarm messenger into a warm friend; it will drive him into the arms of Sir James Mackintosh, and other zealous friends of liberty; (Hear, hear!) it will induce him, in his seat of Parliament, to more warmly espouse our cause, and to be the very means of forwarding our objects.

Wardell's amendment also opened him to attack by Robert Howe:

I should not have offered one word to this Meeting, had not an attempt been made to ruin our Address, to murder it, and to rob the Governor of the best gem that it contains. (Hear, hear!) Gentlemen this is the very best part of the Address; take this away, you leave it a mere nullity.¹⁷

Wardell responded, defending himself and his liberal principles. He asserted the correctness of his intentions and attempted to dispel any thoughts that he may have been wavering in his support. He pleaded that his amendment was proposed not because of the 'scurvy treatment' Brisbane was expected to receive in England but because the matters dealt with 'were of too much interest to the Colony to be embodied in an Address.'¹⁸ Sensing the direction the meeting was now heading he withdrew his amendment. For Governor Darling and his Private Secretary, Wardell's action may have indicated that the lawyer, despite his professed liberal principles, was a commonsense man with whom accommodation was possible.

The new Address was accepted to replace the first, but there was some opposition which was not recorded in the newspapers. Writing to the Colonial Office John Macarthur provided additional detail. He claimed that the Address was approved by twenty-two named men, 'Supported by about 200 Emancipists and Ticket of Leave men, Chiefly Labourers'. He then supplied the names of sixteen settlers who he listed as 'The opposers of the Address'.¹⁹

The public meeting had been held on Friday, and on Sunday the gentlemen's dinner was cancelled. W.H. Moore, acting as committee secretary, wrote to the Governor from Parramatta noting that they had received his request to invite men 'whose presence had not been anticipated by the Subscribers'. Moore claimed his committee did not feel 'authorized' to consider the matter without the approval of their subscribers and 'regret[ted] that they are placed under the painful Necessity of declining to make any further preparation for the

¹⁷ *Sydney Gazette*, 24 October 1825.

¹⁸ *Ibid.*

¹⁹ John Macarthur, CO201/179, p.232.

expected honor of your Excellency's Company.'²⁰ News of what had taken place at the Court House on Friday quickly reached Parramatta. Francis Forbes placed the blame for the committee's action with John Macarthur, and called the dinner cancellation 'an extraordinary step'.²¹ Considering the committee's public vilification by Wentworth, one of the guests the Governor was pushing on them, the cancellation was hardly unexpected.

The news of the cancellation was not carried in the next morning's *Sydney Gazette*. Robert Howe republished the original dinner advertisement, while again editorialising against it, and attempted to classify the emancipists and the free settlers as a new social group: 'We have not yet heard how the exclusionary Dinner comes on:- It is pretty correctly ascertained, so goes report, that His Excellency will dine with THE COLONISTS before He leaves.'²² The paper supported the politicised Address and approved Wentworth's role in putting it forward. In a personal comment Robert Howe reflected on the freedom of the press and said that he had worked on the paper since his eighth year and 'for twelve long years this Journal laboured under a Censorial bondage that language is inadequate to describe.'²³ Adopting the language, and tone, of the previous Friday, Howe used gentry as both insult and praise and made use of Wentworth's new word 'exclusionist.' The paper claimed that at the public meeting the respectable country gentry were present while 'Those Gentry, not inappropriately termed by Mr Wentworth EXCLUSIONISTS, were backward in honouring the Meeting with their presence.'²⁴

As the newspapers praised the Governor, the emancipist's hero supporting the extension of their civil rights, Brisbane was privately showing a far more nuanced attitude towards them. That Tuesday he wrote to Earl Bathurst reporting

²⁰ Moore to Brisbane, 23 October 1825, Copies of letters received by the Governor, 1823 – 1825, AOT NSW 4/1618, p.283.

²¹ Forbes to Wilmot Horton, 26 November 1825 in Bennett, *Some Papers of Sir Francis Forbes*, p.89.

²² *Sydney Gazette*, 24 October 1825.

²³ *Ibid.*

²⁴ *Ibid.*

on his testing of trial by jury in the sessional courts over the previous year. He was satisfied with its positive results, and included the approving reports of the magistrates whose opinions he had requested. However, Brisbane was unwilling to commit himself completely to the inclusion of emancipists on juries. He allowed that 'it would be expedient under certain limitations', the major one of which would have been 'the unencumbered possession of real property to a given annual value'.²⁵ Of the magistrates questioned only those from Parramatta, including D'Arcy Wentworth, suggested that respectable emancipists be accepted as jurymen. None of the other benches mentioned them.²⁶

On Wednesday a deputation called on Brisbane to present him with the Address. By mid-week he would have been well aware, both from oral reports and reading the *Sydney Gazette*, of what had taken place. He accepted the offering and informed them that he was gratified at their approval of his administration. Wearing his heart on his sleeve he told them that their action at that time and 'under the circumstances of my retirement' would refute 'the misrepresentations which have been circulated in England to the prejudice of my Administration.' He stated his opinion that there was no opposition in the colony to the introduction of the free institutions, and that any who did oppose it would be both 'presumptuous' and 'disloyal' in objecting to the 'venerated Institutions of their Forefathers'. The Governor, as he and the delegation well understood, was being disingenuous. The real point of fracture in the matter was over the inclusion or exclusion of the emancipists. Neither the Address nor the Governor mentioned this important point. Again the colonial politicians, and the Governor, were adjusting their words for an imperial audience. Those three words 'trial by jury', without uncomfortable qualifications about emancipists and their rights, ensured political support in Britain. What the residents seemed to be asking for was clear

²⁵ Brisbane to Bathurst, 25 October 1825, *HRA*, series I, volume XI, pp.892 – 894.

²⁶ The Parramatta magistrates were D. Macleod, W. Lawson and D'Arcy Wentworth. Parramatta Magistrates to Major Ovens, 10 October 1825, *HRA*, series I, volume XI, p.897.

and British, but it became less clear if the question of ex-convict participation were added.

Brisbane flatteringly called the colony 'this infant Empire' and promised to support the extension of the colonists' civil rights in England. He made an oblique reference to the House of Commons: 'I desire to be understood, as offering a solemn pledge, that my personal attention and best interests shall be exerted on their behalf, in every Situation in which I may hereafter be placed.'²⁷

Having used the catchall phrase 'THE COLONISTS' on Monday the *Sydney Gazette* took space on Thursday to explain what it wanted its readers to understand by that term:

MEMORANDUM. — As the Emancipists and the Emigrants have of late become so thoroughly amalgamated, and in fact forming only one Body, with the exception of a very few individuals in the Colony, we beg to state that in future, we shall cease to use either of these terms, confining ourselves to the word "THE COLONISTS", in which we will comprehend all the free inhabitants.

The *Australian* was invited to follow where its rival led and

forgo a distinction which the Meeting of last Friday has, so far as we are concerned, for ever abolished. But we are aware, that there are amongst us, though very limited in point of number, who will not like to be huddled together, we shall honour them with an epithet quite opposite to that of "THE COLONISTS", designating them "EXCLUSIONISTS." We now beg leave, most respectfully, to take a kind farewell of the Emancipist and Emigrant, by consigning each to oblivion.²⁸

The word convict was already in virtual purdah and had been replaced by euphemisms such as government servant or assigned servant. One of the drawbacks to this blurring of distinctions between emancipist and emigrant is that the reporting of the *Sydney Gazette*, while it remembered to be politically correct, lacks clarity.

²⁷ Reply to Address by Sir T. Brisbane, 26 October 1825, *HRA*, series IV, volume I, pp.631 – 633.

²⁸ *Sydney Gazette*, 27 October 1825.

Using a bold headline, 'PRODIGIOUS! – MOST EXTRAORDINARY!', the *Sydney Gazette* broke the startling news that the gentlemen's dinner for the Governor had been cancelled. W.H. Moore's letter to Brisbane was reprinted.²⁹ This publication of a private letter to the Governor suggests Brisbane was prepared to use the newspapers for his own purposes, and had allowed its leaking to embarrass John Macarthur. On behalf of the organisers Moore had taken out an advertisement to advise subscribers that the dinner, 'from unforeseen Circumstances', had been abandoned.'³⁰

In bold headlines the *Sydney Gazette* denounced the cancellers: 'AUSTRALIAN ARROGANCE! – The EXCLUSIONISTS (we mean those only with whom the affair originated) have abandoned their Dinner ...' For the first time the paper's readers were told of the Governor's request that six further individuals be invited to the gentlemen's dinner. Brisbane was represented as believing, almost democratically, that a dinner 'representing by its Guests the Commonwealth at large' would be best for him. The cancelling allowed the *Sydney Gazette* to use its long memory and denounced the cancellers in terms of their rank and class pretensions:

If among the Exclusionists there were men of real birth – men any near allies to the Gentry of England than stay-makers [Macarthur], blacksmiths [Marsden], linen-drapers, bankrupt merchants, clock-makers, &c &c usually are, then indeed we might make allowance for the prejudices of ancient birth and family; but even then, a refusal to dine with so distinguished a Man as Sir THOMAS BRISBANE – the Companion of WELLINGTON, covered with the honours of His SOVERIGN [sic] – would render such refusal deserving of reprobation, mingled with contempt for their misplaced pride ... almost to a man, they entered the Colony as needy adventurers – that the greatest of them commenced his career with a small English sow for his capital.

²⁹ *Ibid.*

³⁰ *Ibid.*

With one dinner now out of the way, Brisbane accepted to dine with the colonists at Nash's Inn, Parramatta - 'The Gentlemen of the Colony, and all other respectable Colonists, will be present.'³¹

The *Gazette* exaggerated both the nature and the importance of the Court House public meeting describing it as 'the only Constitutional Assembly of the kind which we have been permitted to behold since the formation of the Colony in 1788.' Opponents were again abused as a small group of traditional power holders: 'these grandees of the first order.' Wardell, unnamed, was accused of being an agent of the maligned forces. The paper adopted elements of Wentworth's strong imagery, 'the yellow snake gentry (see Mr Wentworth's Speech)', and was faithful to the singular nature of the beast. The report made the important observation that the political divisions in New South Wales had not been clarified by the public meeting. It recognised that the proposal for a house of assembly did have its opponents and that 'it was supposed that discussion would arise out of the question.' Opposition had not been voiced and the paper accepted that 'there are some in the Colony, who, though by no means inimical to the interests of the Colony, yet mention notions prejudicial to the Establishment of a House of Assembly.' While adverting to these good opponents, it assailed the bad opponents and their aims: 'a family compact ... to retain the power of their own oligarchy.'³²

When the *Australian* was published on Thursday it interpreted the events (perhaps for its English readership), and rearranged the chronology. Editorially the paper commented that the dinner 'did not receive its true designation, and that all the Colony was not given to understand that it was a family, instead of a Colony-Dinner.' It explained that a farewell dinner had been organised to which the emancipists were pointedly not invited. Although only free settlers had called on him, it claimed that some of the emancipists saw Brisbane to ask him if he

³¹ *Ibid.*

³² *Ibid.*

would attend a dinner if they organised one. The paper erroneously asserted that the public meeting was the first held in Australia, and 'may be hailed as the harbinger of future meetings, involving the rightiest interests of the people.' Although Wardell had spoken against Wentworth's address because of its political material, his journal now ridiculed the first text accepted by the meeting for its lack of political content - 'The rejected Address, to which this formed an amendment, might have answered some purposes; but was altogether unsuited to the present occasion. It might have done admirably well for a birth-day offering to some patriarchal gentleman ...'³³

Governor Brisbane, whom George Boyes had likened in a letter to his wife as Sancho Panza,³⁴ was turned into a plausible Don Quixote by the *Sydney Gazette* – which also credited him as the author of the catchall term 'the colonists' which they had been so assiduously promoting:

we are confident that as soon as possible after the arrival of His Excellency in England, "THE COLONISTS (to borrow the language of Sir THOMAS BRISBANE) WILL HAVE AN EXPANSION OF THEIR CIVIL RIGHTS," in which we are bound to include, with Trial by Jury – A House of Assembly!

Australian patriotism was linked to praise of the Governor: 'While we would say on the one hand, - "ADVANCE AUSTRALIA", we would exclaim, on the other – "BRISBANE FOR EVER".'³⁵ The *Australian* seemed convinced of the shining political future of Brisbane, though perhaps doubting the fervour of his political principles, and left it unclear whether he would be supporting the Whigs or Tories: 'we are assured, whether in favour with the Court, or drawn to the Opposition, will be equally the undeviating Advocate and Supporter of the Rights and Privileges of the Colonists of New South Wales.'³⁶ Other Addresses were offered to the Governor and, despite his private caustic descriptions, George

³³ *Australian*, 27 October 1825.

³⁴ Letter 18 March 1825: Chapman, *The Diaries and Letters of G.T.W.B. Boyes*, p.221.

³⁵ *Sydney Gazette*, 27 October 1825.

³⁶ *Ibid.*

Boyes was on the committee which arranged for the recently arrived Augustus Earle to paint a portrait of their departing chief.³⁷

As the newspapers presented propagandist images of the whole colony united against the Faction, two defections appeared. The free settler W.J. Browne had been selected as a member of the deputation carrying the Address to the Governor. A newspaper letter from ARGUS revealed he had not taken part and suggested his supposed motives:

If this Gentleman disapproved of the Address why not have said so at the time he was appointed to the Deputation? If he disapproved of an emancipist being associated with him, why not at the time have declined the Deputation? I cannot but suspect, from various circumstances that are pretty generally known, that the horrors of emancipist contamination, however, proved the real bugbear which drove him out of the deputation.³⁸

The free merchant and occasional newspaper writer Thomas Horton James had been named as a steward for the new dinner.³⁹ He took out a newspaper advertisement to state that he was unable to accept.⁴⁰ The *Sydney Gazette* accepted his payment, and criticised his action. They ascribed his withdrawal to a rumour that he believed it 'a party Dinner! But this is false.' To support their claim the paper noted that many of the men invited to the cancelled first dinner would be attending the second, victorious, meal. The paper also asserted that James had been chosen as a steward because it was thought that he was not associated with any party.⁴¹

The newspaper's reasons may not be why Browne and James broke ranks. Browne had seconded the initial address presented to the meeting and may even have been involved in its composition. Browne and James, and Alexander Berry

³⁷ Chapman, *The Diaries and Letters of G.T.W.B. Boyes* p.243.

³⁸ Letter signed ARGUS, *Sydney Gazette*, 31 October 1825.

³⁹ Thomas Horton James was the author of series of newspaper articles in the *Australian* which George Mackaness published as 'A ride to Bathurst, 1827', and erroneously attributed to William Dumaesq. See George Mackaness, *Fourteen Journeys over the Blue Mountains of New South Wales 1813 – 1841* (Sydney 1965).

⁴⁰ *Sydney Gazette*, 3 November 1825.

⁴¹ *Sydney Gazette*, 7 November 1825.

who presented the first address, were listed by Macarthur as 'opposers' of the Wentworth Address.⁴² James perhaps disliked Brisbane more than party politics. Since arriving in Sydney he had occasionally clashed with the Governor. As recently as 11 October he had been the subject of a spirited, and uncomplimentary, despatch from Brisbane to Earl Bathurst. James had tried to appropriate certain vacant land in Sydney including, as Brisbane complained, 'a large portion of a small pleasure ground surrounding the House, in which I am residing.'⁴³ By advertising that he would not act as a dinner steward he was directing a pointed message, which eluded most contemporaries, to the governor himself.

Thus far into the crisis Governor Brisbane was supporting the anti-Macarthur feelings. In private correspondence he wrote that 'there is no stifling the voices of 50,000 minus Six individuals, which is the sum total of the whole number of those, who have created all the misrepresentation against me.'⁴⁴ Hurt by his recall Brisbane sought the support of the activist political elite by going further than any other governor in promising them colonial political reform. His words were a tacit agreement that changes in the administration of power was necessary, desirable, and possible. In public, Brisbane did not defend the penal administration against the encroachments of a free society. He pointed towards the future and promised to stir himself in London.

⁴² John Macarthur, CO201/179, p.232.

⁴³ Brisbane to Bathurst, 11 October 1825, *HRA*, series I, volume XI, pp.887 – 892

⁴⁴ Brisbane to Bruce, 1 November 1825, Brisbane Papers, ML MS 329, p.139.

Chapter Eight

The Governor's Dinner

With the dinner fast approaching Brisbane was about to be seen in public with emancipists he had never entertained at Government House, and whose interests he had done little to advance. As he retreated from New South Wales he sought their backing, and that of the liberals who spoke for them. He would repay them with his presence, words of political support, and the promise of future constitutional reforms.

After smashing their rivals' dinner plans, the victors held two more meetings, on 28 October, at the Sydney Hotel. At 10 am, the first dealt with their own meal. Stewards were chosen. E.S. Hall suggested breaking with custom and not selecting an important civil officer for president but a 'wealthy Commoner'. He nominated D'Arcy Wentworth, who, despite his protests of ill health, was elected unanimously. Other business concerned the selling of dinner tickets, which were more expensive than those of their rivals, and agreement that high ranking civil, military and naval officers should be invited as guests. Augustus Earle was commissioned to decorate the room.¹

At the second meeting at mid-day, the victors enjoyed their political revenge. They passed a meaningless resolution condemning W.H. Moore's letter to the Governor. To annoy the Faction they resolved that its committee of management had 'exceeded the power with which they were invested' and that

¹ Those calling the meeting to choose stewards and make arrangements for the proposed dinner were D'Arcy Wentworth, Thomas Raine, Daniel Cooper, William Wentworth. Those calling the meeting to discuss W.H. Moore's letter were D'Arcy Wentworth, Thomas Raine, Matthew Hindson, William Wentworth. *Sydney Gazette*, 27 October 1825.

President D'Arcy Wentworth, Vice President R. Wardell, Stewards W. C. Wentworth Esq., William Lawson Esq., Thomas Raine, W. Redfern, E.S. Hall, G.T. Savage, T.G. Pittman, R.C. Pritchett, D. Cooper, James Robertson, S. Loan, R. Howe, T.H. James. Only William Wentworth and William Lawson were honoured with Esquire. *Sydney Gazette*, 31 October 1825.

the Governor's demand that they invite the stewards from the second proposed dinner 'ought to have been submitted, by them to the Subscribers at large.'²

The newspapers also enjoyed themselves at the expense of the vanquished. They picked over the original meal, accusing the organisers of involving only a chosen few and thus inferring that the slighted ones were not 'Gentlemen of the Colony.' The *Sydney Gazette* allowed Justice Stephen, who was to have been its president, to make a face saving retreat by publishing the claim he had made to Governor Brisbane that 'he was not aware of any intention on the part of the Gentlemen to exclude the Gentlemen of the Colony.'³

While the newspapers were amusing themselves portraying a bickering community, Laurence Halloran was gaining the support of the warring elites (old settlers, new emigrants and emancipists) with his plans for a Public Free Grammar School. Another public meeting was held at which eighteen gentlemen were represented or present, and Chief Justice Forbes was chosen as president of the committee. Halloran's proposals brought together, amongst others, John Macarthur, William Bland, John Mackaness, Simeon Lord, Francis Rossi, Samuel Terry, William Carter and George Allen.⁴ Power, influence and wealth worked together as emancipists, government officers and free emigrants united to support the future of the colonial youth. Although it seemed the colony was hopelessly divided, enemies co-operated to plan a common future for their children.

Before his farewell dinner the *Australian* outed Brisbane as a Whig. Previously they had not specified which party he would support, now they pushed him towards the opposition. They did so for their local and British readership, to influence Brisbane's future political actions. The indiscretion would prevent him retreating from the opinions he was expressing in New South Wales. The paper represented the events around his departure as a political demonstration favouring the emancipists:

² *Sydney Gazette*, 3 November 1825.

³ *Sydney Gazette*, 31 October 1825.

⁴ *Sydney Gazette*, 3 November 1825; *Australian*, 6 October 1825.

Can any class after this be told, as a class, that they are not fit to be Jurors, that they are not fit to appear at a public dinner, that they are not fit to be invested with political existence; and that altogether they may be intrusted with the delicate charge of guarding the morals of the rising generation, they possess neither morality nor respectability themselves.⁵

Further farewell addresses piled up on the grateful Governor's desk.

Amongst them was one from the government officers. Francis Forbes had signed it, then tried to disassociate himself from its political content by complaining to Wilmot Horton that it

has been wrested into an adoption of the sentiments of the popular address, which I for one, certainly never intended it to be. Nor was I aware that it could be considered as any thing more than a polite excuse for not attending the occasion of a public compliment to his Excellency, until I saw it turned to another purpose by the ingenuity of the newspapers.⁶

On the day of the dinner, a letter appeared in the *Sydney Gazette* suggesting united action could be taken by wealthy emancipists against the free emigrants. Until now no clearly identified emancipist writer had appeared in the newspapers. The unnamed author proposed that a group, "The Retaliation Club", could be formed from the wealthy emancipist capitalists 'who are in the habit of purchasing cargoes from the foolish Exclusionists.' Their retaliation would be economic. They would group together and only buy from 'a Liberal' – or non-exclusionist. The others would be left with unsaleable cargoes until the 'justly punished Exclusionist begins to feel it convenient to retire to a farm, as being more independent, and more free from Colonist impudence.'⁷ The writer used the newly fashionable word 'Exclusionist' which had so appealed to Robert Howe, and those he attached the name to were not the wealthy gentleman pastoralists but the free emigrants involved in trade.

⁵ *Australian*, 3 November 1825.

⁶ Forbes to Wilmot Horton, 26 November 1825 in Bennett, *Some Papers of Sir Francis Forbes*, p.89.

⁷ *Sydney Gazette*, 7 November 1825.

That night the governor dined with his subjects at Nash's Hotel in Parramatta. Outside the packed dining-room a crowd gathered to see the guest of honour and his hosts arrive. Amongst them the *Sydney Gazette* picked out an unnamed 'Reverend Divine' (could Samuel Marsden have wandered across to watch?). The paper complained that he was only there 'with the view of ascertaining who was in the train of HIS EXCELLENCY !!!'.⁸ Brisbane was a splendid figure of vice regal gorgeousness. The band of the Third Regiment, the Buffs, played 'See the conquering Hero comes' as he made an entrance which the convict actors at Emu Plains would have envied. He was superb in blue and gold and the candlelight flashed on 'the honours of His SOVERIGN'.⁹ The tables had been placed end-to-end to form a long horseshoe and between a hundred and a hundred and ten 'gentlemen' made themselves comfortable. Ex-criminals rubbed along with senior government officers to honour themselves and their departing chief. Colonial history never saw a similar social occasion.

John Macarthur, adding thumbnail sketches of their characters, gave Earl Bathurst the names of fifty-one guests. English cartoonists and wits were outdone by his malicious, and accurate, annotations. The Governor and the cream of Botany Bay sitting down to dinner. Macarthur's pen portraits were humourless, which added to the jest, or horror.¹⁰ He remembered past misbehaviours and present dis-respectability - an interesting comment on the supposed reformation of morals that some claimed resulted from a change in climate. These were the men with whom Brisbane was seeking to ingratiate himself: D. Cooper Esq. 'Well known at Manchester where he was repeatedly flogged at the Carts tail'; Solomon Solomon Esq. 'Jew Publican. lately deprived of his Licence for keeping a

⁸ *Sydney Gazette*, 14 November 1825.

⁹ *Sydney Gazette*, 27 October 1825.

¹⁰ The Reverend John Dunmore Lang was not in the colony at the time but asserted that he was later shown a copy in early 1826. His comments may carry a measure of hindsight (as well as his usual biases): 'I could not help regarding with a strong feeling of reprobation the superlatively evil spirit which this precious document evinced, while at the same time I could not help admiring the consummate artifice with which it was concocted.' However he did not deny its truthfulness: [John Dunmore Lang] Archibald Gilchrist, compiler and editor, *John Dunmore Lang: Chiefly Autobiographical 1799 to 1878*, volume I (Melbourne, 1951), p.76.

disorderly House'; S. Levey Esq. 'London Jew'; Underwood Esq. 'Well known in London – has often been flogged here'; Robert Howe Esq. 'Govt Printer - Son of two convicts'; Black Esq. 'Natural Son of Mr Simeon Lord'; Thomas Raine Esq. 'a Swindler – deeply in debt'; E.S. Hall Esq. 'Writer of the Address – living by his wits'; Rowe Esq. 'An attorney. Most worthless Character'; R. Campbell Esq. 'a general trader – a very notorious person'; and 'Several Common people names unknown'. D'Arcy and William Wentworth were 'too well known to require a description' and the emancipist Dr Bland's presence was noted, and partly excused: 'who I suppose attended to avoid offending his patients'.¹¹

Chief Justice Forbes, whose attendance would have made the occasion satirically perfect, used ill health to explain his absence. His letter of excuse was passed to the *Sydney Gazette*: 'And now, ye true Lovers of your adopted Country, read the following Letter from the IDOL OF NEW SOUTH WALES!'¹² The capital letters must have caught the new Governor's attention when he read the newspaper in Hobart.¹³

Amongst the guests was 'Old Ironbark', Lieutenant William Lawson. He was one of the explorers of the Blue Mountains, an ex-Army officer, a magistrate, a landowner. In the future he would be elected to the first New South Wales Legislative Council. His social standing has confused historians. One has made him an 'exclusive' and noted that he was '[a] pillar of the Presbyterian Church'.¹⁴ Contemporaries were less sure of his social position. His wife, Sarah, had been a convict girl and two of their children were born before their marriage.¹⁵ George Boyes claimed the misalliance excluded Lawson from good company,¹⁶ yet other

¹¹ John Macarthur, CO 201/179, p.230.

¹² *Sydney Gazette*, 7 November 1825.

¹³ Darling to Hay, 10 December 1825, *HRA*, series I, volume XII, p.83.

¹⁴ John Ritchie, *The Evidence to the Bigge Reports*, volume 2, p.45.

¹⁵ Carol Liston, 'Colonial Society' in James Broadbent, Joy Hughes (editors), *The Age of Macquarie*, Melbourne University Press, Carlton, 1992, p.26.

¹⁶ Chapman, *The Diaries and Letters of G.T.W.B. Boyes* p.184.

similarly afflicted gentlemen entered society by leaving their wives at home.¹⁷ Involved in the planning for the dinner only he and William Wentworth were distinguished in the newspaper advertisements with that important marker of rank, an 'Esq.'¹⁸ A large landholder, and a business rival, Lawson appears on Macarthur's list as 'A magistrate and landed proprietor. Married to a convict who was formerly a Tambourine Girl attending country wakes and fairs'.¹⁹ Sarah has perplexed later writers. Her letters revealed her to one biographer 'as intelligent and culturally-minded',²⁰ while another writer found her '[b]arely literate'.²¹ In Manning Clark's *History* Mrs Lawson appears incognito as 'the notorious' Tambourine Sal.²²

Macarthur named, and described, fifty-one men while noting the presence of the Governor and fifteen guests; a total of sixty-seven out of a hundred or a hundred and ten diners. Macarthur covered the gap in his account by designating the un-named men as 'Several common people'. The missing men may have been free and respectable emigrants whose presence would have watered down his arguments.

As the dinner began D'Arcy Wentworth pleaded illness and William replaced him as president. This dynastic handover illustrates the growing acceptance of William as a political leader in the colony. Brisbane spoke first and set the tone for the evening. He broached political matters and combined them with personal sentiments. Those political attitudes the newspapers had ascribed to him proved accurate. His bitterness at being recalled was obvious and

¹⁷ See Eliza Darling on William Wentworth who, despite his mistress and bastard children, was socially acceptable because he was an educated barrister and was, before the Sudds-Thompson Case, invited to Government House. Eliza Darling to Ann Dumaresq, 13 December 1832, ML A 2566.

Carol Liston also notes that Wentworth's attacks on Darling and Alexander Macleay, and not his liaison with Sarah Cox, 'ensured his rejection by the official and cultural élite': Liston, *Sarah Wentworth*, p.42.

¹⁸ *Sydney Gazette*, 27 October 1825.

¹⁹ John Macarthur, CO201/179, p.230.

²⁰ William Beard, editor, *Old Ironbark: Some unpublished correspondence (1817 – 1824) from and to William Lawson Explorer and Pioneer of Veteran Hall, N.S.W.* (Sydney, 1967), p.13.

²¹ Carol Liston, 'Colonial Society' in James Broadbent, Joy Hughes (editors), *The Age of Macquarie*, Melbourne University Press, Carlton, 1992, p.26.

²² Clark, *A History of Australia*, II, pp.60, 218 and 335.

understandable, but he went on to raise political hopes and impossible expectations for rapid change:

My opinion has already been expressed, that any of the Free Institutions of Great Britain should not any longer be withheld from the Country, as I am decidedly of opinion that it has arrived at a state fit for their reception (Hear, hear).²³

William Wentworth responded and the *Sydney Gazette* remarked, with frightening stupidity: 'If a man be sincere, though his maxims be wrong, still he has a claim on public consideration, and however his sentiments be disputed, no one should question the sincerity of his motives ...'²⁴ He proposed Governor Darling's health and drew attention to his Private Secretary, Henry Dumaresq. Given Wentworth's later hatred of Darling, his words were flooded with historical ironies:

It would be extremely premature to launch out into anything like commendation on this occasion, but this much might be said that General Darling will enter upon the Government of the Colony with an advantage which none of his predecessors enjoyed. Fortunately for him, he is connected with a Gentleman, of whom I am proud to say I do know something; and who, if he impart some of his month's experience to the General, the latter will then land with an advantage which no preceding Governor ever possessed. I rejoice also, the more at this circumstance, as it will be the means of giving a colour and complexion to his Government; and I hope to be among the number of those, who will, at a future date, meet together to pay him a parting tribute, as warm as we now pay to his illustrious Predecessor. These, Gentlemen, are my hopes; these are my anticipations; and on what else, but hopes and anticipations, is the happiness of our existence comprised. Gentlemen; I now propose "the health of Major General DARLING – may he have wisdom to appreciate, and liberality to imitate, the example of his illustrious Predecessor."²⁵

Wentworth's polite and friendly words may suggest he anticipated an appointment to Darling's Legislative Council. Although he may have considered

²³ *Sydney Gazette*, 10 November 1825.

²⁴ *Ibid.*

²⁵ *Ibid.*

himself a logical and obvious choice he had not seemed so to Governor Brisbane when the latter had supplied London with a list of possible candidates in November 1824.²⁶ Wentworth was wealthy, well educated, well connected, his books made him an expert on the colony and he was obviously willing. Dumaresq responded courteously, and Wentworth continued with a political speech on free institutions. His friend the Sheriff interjected to complain of the political nature of his remarks but the audience, or some of them, cheered Wentworth on. The Governor, after all, had opened the proceedings by talking politics. When Wentworth proposed the 'Liberty of the Press', Brisbane made a last attempt at currying colonial favour by claiming 'It was one of the best friends He had in the Colony (hear, hear!) and the best friend He should leave behind him.'²⁷ His reward was immediate. Michael Robinson, the colony's poet laureate, and another example of how English institutions were transformed between the mother country and the colony, offered him a farewell ode. The wording of its ending had already been usurped by Wentworth, 'Our Brisbane and Freedom for ever!'.²⁸ All classes, according to the *Australian*, 'blended on the occasion.'²⁹ Even allowing for the warming effects of the alcohol and oratory, perhaps some of the hurrahs heard that night were sincere.

Brisbane gave his view of the evening to the *Sydney Gazette*. The paper was gratified to learn that Brisbane 'had never spent a more agreeable evening in his life, and that he was quite at home when encircled by such a host of friends as those whom he had the pleasure to meet on the evening of Monday last.'³⁰

This was not the only entertainment offered to Brisbane for on the following Wednesday he was entertained by the Australian Turf Club at Hill's Tavern in Hyde Park. The 'Gentlemen of the Turf' included a mixture of familiar

²⁶ Bathurst to Brisbane, 19 January 1824, *HRA*, series I, volume XI, p.195; Brisbane to Bathurst, 1 November 1824, *HRA*, series I, volume XI, p.407.

²⁷ *Sydney Gazette*, 10 November 1825.

²⁸ *Australian*, 10 November 1825, *Sydney Gazette*, 10 November 1825.

²⁹ *Australian*, 10 November 1825.

³⁰ *Sydney Gazette*, 14 November 1825.

faces including Henry Dumaesq, William Wentworth, Robert Wardell and the emancipist Dr. Bland. Also around the table was his private critic George Boyes, offering respectful public tribute to the departing governor.³¹

Vilified by Wentworth, insulted by the press, John Macarthur attempted to counteract the political claims contained in the Governor's Address by organizing a counter-petition. His actions were sneered at by the *Sydney Gazette*:

We know from good authority, that a Gentleman belonging to the other side (we mean the few Aristocrats) has been in town the last few days, running from house to house, and procuring signatures to an Address to go by the Harvey, asserting that the respectable majority of the Colonists were opposed to the sentiments therein conveyed.³²

The petition, like the Address, recommended trial by jury - but on the same terms as it was enjoyed in England. It was a comforting formula of words, for surely it excluded emancipists from the jury box. The opposed sides asked for the same British institution, only the liberals deliberately left the matter of emancipist involvement unclear. The commentary notes in the *Historical Records of Australia* on this petition, and on the dinnerist crisis in general, are incorrect.³³ The petitioners designated themselves as 'Landed Proprietors, Merchants, and other free inhabitants' and their petition, while supporting the 'expressions of personal regard' for Brisbane and for the mildness of his administration, which had been expressed by the Address, criticised that document because of the principles on which it was based and the personal reflections which it carried. The petitioners objected that 'a few Individuals' had attempted to pass off quite wrong opinions as 'the united voice of all classes of the Community'.

³¹ *Ibid.*

³² *Sydney Gazette*, 7 November 1825.

³³ Brisbane's actions in relation to the dinner are designated 'innocent', and the analysis is heavily influenced by a supposed clash between 'the emancipist and exclusionist classes.' The voting of the Address is placed after the dinner; W.J. Browne is erroneously listed as a member of the deputation who presented the Address to Brisbane; the press discussion is placed after the presentation of the Address; the Macarthur Petition is described as another Address: Notes 28 and 29, *HRA*, series I, volume XII, p.812.

Where the Address praised the free press the petition disapproved of a 'licentious press', which, it was claimed, was threatening to turn the lower against the upper classes and against legitimate authority and foresaw that this could undermine order in the colony. The petition urged the creation of 'a well regulated and really independent press', and increased migration of respectable emigrants. The petitioners called for the installation of an Executive Council, drawn from the ranks of government officers; and a Legislative Council, of at least fifteen members, nominated by the crown from the most respectable landholders and merchants. Darling was about to institute a four-member Executive Council of government officers and a seven-member Legislative Council including three settlers. The petition asked for trial by jury to be extended to Supreme Court trials - 'founded upon the same principles, with respect to the qualification of Jurors, as are, in England, considered indispensable to secure an impartial administration of Justice'. The petition foresaw that such action would destroy the power of present agitators to ferment further troubles and allow the loyal inhabitants to devote 'their undivided attention to the true interests of this valuable portion of His Majesty's Dominions'.³⁴

Forbes was unaware that in July the Colonial Office had applied a ruler to the Empire and, for administrative purposes, divided it in two halves. Wilmot Horton, with whom the Chief Justice conducted a political and unofficial correspondence, was no longer directly concerned with the Australian colonies as he took responsibility only for British possessions to the west of the Atlantic Ocean.³⁵ The new Under-Secretary, Robert Hay, was occupied with those to the east of the Atlantic including New South Wales and Van Diemen's Land.³⁶ Believing the Macarthur petition would be dealt with by Wilmot Horton, Forbes

³⁴ Petition to Bathurst, 1825, *HRA*, series IV, volume I, pp.633 – 635.

³⁵ Charles Greville drew an interesting, and unfavourable, picture of Wilmot Horton after being in the audience during a lecture given by Wilmot Horton in 1830 on his plans for encouraging emigration – 'He is full of zeal and animation, but is totally without method and arrangement that he is hardly intelligible': C.C. F. Greville, *The Greville Memoirs*, volume II (London, 1874), p.98.

³⁶ Note 22, *HRA*, series III, volume V, pp.867 – 868..

disparaged it to him. He called the organisers men 'in certain influential quarters' and undermined their claims to represent a substantial body of colonial opinion: 'yet the utmost power and management of their adherents has not been sufficient to get up anything in the shape of an *open* counter-address.'³⁷ Clearly John Macarthur did not have the Chief Justice's support.

After the event the *Australian* analysed the relations between the emancipists and their enemies. With the heat generated by the dinnerist crisis cooling, the matter may have been treated more for their imperial readers than for local ones, who would have been familiar with the material covered. The newspaper claimed that that the dispute had been between the emancipists and the 'oldest residents', between liberal and non-liberal thought. The new emigrants were supposed, by the writer, to hold more liberal attitudes - a possibly false supposition. As usual the *Australian* attempted to form public opinion, not to represent that opinion. Whig, radical, liberal, reformist attitudes were gaining strength in Britain and the paper may have been correct in believing that some of the new settlers were influenced by these thoughts. Yet the colony was still seeing the arrival of people who would have not at all accepted these viewpoints. Many of the new colonists were ex-military men, government officers with colonial experience, women holding traditional king and Tory ideals, men on the make seeking to improve their fortune. To such people the reformist ideas gaining strength in Britain were anathema. The *Australian* distorted and exaggerated the attitudes of the offending older settlers, and they were berated for a supposed lack of British feeling:

The oldest residents only, here feel any inclination to oppose the Emancipists on this topic; and they know the least of British customs, possess the least of British feeling. Almost educated to domineer and tyrannize over their fellow creatures, they cannot endure to see them have any enjoyment in common with themselves. Once down, and always down, is their cry – their creed – and from this to doomsday would they oppose conciliatory

³⁷ Forbes to Wilmot Horton, 26 November 1825 in Bennett, *Some Papers of Sir Francis Forbes*, p.89.

measures, not because conciliatory measures would help those who have once erred, and who wish to regain the paths of virtue; but, because conciliatory measures are liberal measures, and liberal measures are their detestation.³⁸

Although it advocated the rights of the emancipists the *Australian* opposed any idea of revenge. When the Retaliation Club had been mentioned in the *Sydney Gazette* its existence could have been a joke. Taking up the topic ten days after its rival the *Australian* took the matter seriously, attributing it to 'a rumour emanating almost from the head quarters of the Emancipists'.³⁹ If emancipists planned to act on their own behalf they would do so without the support of the *Australian*: "The Retaliation Club" long before we spoke of it, had shewn its hideous colours, and the Colonists generally were dismayed at it.⁴⁰ The newspaper knew better than the emancipists what was in their best interests, and a financial boycott was a step too far. Direct action would destroy the goodwill felt towards them. Emancipist rights, claimed the paper, had not been a matter of party division but something that 'was becoming the cause of the Colony', for emancipist advancement had meant 'the advancement of everybody's concerns'.⁴¹ The paper discerned 'men of moderate principle' among the recent settlers, and ascribed to them a preparedness to 'co-operate with the Emancipists to advance the general interests of the Colony'.⁴² Fears that emancipists would act together if trial by jury and a representative assembly were granted seemed to be supported by the *Australian's* real fear that the emancipists could band together and assume the financial leadership of the colony.

In reacting against a possibility of direct action by emancipists the *Australian* sided with the established order. The Whig lawyer Wardell drew back from what the rhetoric in his own newspaper had supported: 'No! we have asserted, and we repeat, that THE RETALIATION CLUB contains in its principles the germs of

³⁸ *Australian*, 17 November 1825.

³⁹ *Ibid.*

⁴⁰ *Australian*, 24 November 1825.

⁴¹ *Australian*, 17 November 1825.

⁴² *Ibid.*

social war, which would lead to the ruin of the Emancipists, or the extermination of one half of the Colonists ...'⁴³ As good Britons the *Australian* could only compare the horror with foreign examples, for the British core could not contemplate: 'an unpalatable – Italian-like-conspiracy.'⁴⁴ The Retaliation Club may appear as a genuine emancipist voice, but it wasn't. Presumably, in placing its source 'almost at the head quarters of the Emancipists', Wardell knew where the suggestion had come from. Its origin was not an emancipist, but E.S. Hall.⁴⁵

Wardell's political tacking on this issue may have signified to the new governor's Private Secretary that although oppositionist in politics, and sometimes critical of the government, the editor would support authority in a real crisis. His attack on the Retaliation Club could be seen as showing that Wardell's Whig liberalism would take him a certain distance towards radicalism, but that there were limits to this support. Henry Dumaresq wrote cynically about the real political beliefs behind the newspapers, believing that much newspaper sophistry served the editor's own ends. In its short life the *Australian* had been used opportunistically by Wardell. When it had suited him he had swung his paper around to help the usual enemies John Macarthur and Samuel Marsden. During most of 1826 there were friendly relations between Dumaresq and Wardell, and Dumaresq may have believed that given Wardell's pragmatism the opposition newspaper could be held in check. This attitude may account for Governor Darling's tolerant attitude towards the *Australian*, and the harsher words saved for the *Monitor*, in the early period of his administration.

The Retaliation Club then disappeared from the newspapers, which became full of the activities of address writers keen to offer the most fulsome praise of their departing governor. Leaving Sydney, Brisbane was burdened with their efforts. He received addresses from the Wesleyans, the Agricultural Society,

⁴³ *Australian*, 24 November 1825.

⁴⁴ *Ibid.*

⁴⁵ This attribution is based on L.H. Halloran's claim that 'the Editor of the "Monitor" *did*, at no very remote period, suggest the establishment of a "*Retaliation Club*!": *Gleaner*, 26 May 1827.

the Settlers, the Civil Officers, the Free Inhabitants of Parramatta, the Australian Turf Club, and from two Masonic Lodges. Years later they were collected and published in his *Reminiscences* and the anonymous editor commented on the Settlers' Address that it was 'honourable alike to them that spontaneously presented it, and him that received it.'⁴⁶ Brisbane was impressed by these pieces of paper, believing they papered over the serious cracks in his administration. With evident satisfaction he wrote, 'No British Governor left a British Settlement, with more flattering, or gratifying testimonials, than I quit this colony.'⁴⁷ In the final line of her PhD thesis, the historian Carol Liston offered a summing up of the departing Governor - 'New South Wales was not the place for this quiet, amiable gentleman.'⁴⁸

On the ship carrying the Brisbane family to Britain were at least two letters discussing the recent events. Francis Forbes wrote to Robert Wilmot Horton at the Colonial Office, and Henry Dumaresq wrote to his mother. Forbes, as noted above, disparaged John Macarthur's petition and gave Wilmot Horton an inaccurate chronology for the dinner crisis. The Chief Justice stressed his own intelligent and wise attitudes revealing, not for the first time, a condescending attitude towards his superior: 'I immediately foresaw the difficult situation in which the Governor would be placed, and that this said neutral dinner, would like most ill-judged palliatives, produce the very results that it had been calculated to prevent.'⁴⁹ He recommended to Wilmot Horton that Brisbane 'should, if possible, meet with a kind and conciliatory reception in Downing Street.' Forbes wrote that Brisbane 'feels however that his character has been committed, and that some explanation at least is due to him. I cannot but feel a wish almost personal, that he should be restored to favour with Earl Bathurst ...'⁵⁰

⁴⁶ [Brisbane] *Reminiscences of General Sir Thomas Brisbane*, p.54.

⁴⁷ Brisbane to Bruce, 1 November 1825, Brisbane Papers, ML MS 329, p.137.

⁴⁸ Liston, 'New South Wales under Governor Brisbane', p.484.

⁴⁹ Forbes to Wilmot Horton, 26 November 1825 in Bennett, *Some Papers of Sir Francis Forbes*, pp.88 - 89.

⁵⁰ *Ibid.*, p.94.

Dumaresq's letter to his mother was written just before leaving Sydney for Parramatta, to supervise repairs to Government House. The *Sydney Gazette* had recommended he should read its back numbers for enlightenment and Dumaresq bundled up a collection of both newspapers for his mother, to 'shew you the state of Politics in this place.'⁵¹ An intelligent newcomer, present during most of the dinnerist crisis, he was well placed to compare the reality with the newspaper rhetoric. His observations represent the advice and interpretations he offered Governor Darling. Forbes later came to detest Dumaresq and claimed he had an undue influence over Darling. He suggested that during the time Dumaresq was in the colony before Darling's arrival he 'formed those opinions which appear to have had a decisive influence over the affairs of the government.'⁵²

Dumaresq warned his politically interested mother to approach the papers with caution. He threw doubt on the intensity of the party conflict chronicled in them claiming the issue had been 'inflated' by both. The whole dramatic conflict between emancipists and exclusionists he saw as exaggerated -

The fact is, there are no distinctions between Emancipists and Emigrants or other persons, beyond that difference, which exists in any Society, and which gives every one a right to select the Company best suited to his particular tastes.⁵³

Possibly informed by private conversations with Governor Brisbane, Dumaresq told his mother that any possible threat to the new administration would come, not from Wentworth, Wardell and the colonial liberals, but from John Macarthur and the influence he exercised in London. Brisbane had publicly referred to undue influence being exerted at the Colonial Office to engineer his recall. Forbes, writing to Wilmot Horton, had also referred to the Governor's belief. Brisbane had threatened to take action in London and, like the colonists,

⁵¹ Henry Dumaresq to Ann Dumaresq, 25 November 1825, ML A2571.

⁵² Forbes to Wilmot Horton, 14 June 1827 in Bennett, *Some Papers of Sir Francis Forbes*, p.169.

⁵³ Henry Dumaresq to Ann Dumaresq, 25 November 1825, ML A2571.

Dumaresq was also led astray by thoughts of what Sir Thomas would do once he returned to Britain:

Lord Bathurst and his Under Secretary will be taken to task for this, by Sir Thomas Brisbane, will render General Darling's Administration much more facile and vigorous – for the mischief of encouraging Clandestine and malevolent attacks on the Govt. will, I am sure be clearly demonstrated – and so ready an Ear will not be lent to the tales which reached Downing Street through some back door – as has hitherto been the case -

The newly arrived Dumaresq was detached from the events he had witnessed, and uninvolved in the local politicking. His observations are persuasive, if one accepts that the confrontation between emancipists and exclusionists was built up by the newspapers as part of a general liberal thrust. With English institutions as the goal, a conflict between those espousing the extension of these to the colony and an opposing retrograde Faction was a tactical development to obtain and unite majority support.

While Dumaresq was gaining impressions of colonial politics which would influence the advice he would offer Governor Darling, he was also acquiring a passion, which he never lost, and a sensitivity towards his new homeland. With typical immigrant enthusiasm he praised the new and dismissed the old:

Whatever you may think of the comfortable uniformity of a long established Country, you may depend on it, my dear Mother, that something like enthusiasm would be lighted up, were you brought into contact with our settlers here - and there is something Connected with the feeling that you are travelling through immeasurable wastes, and boundless Forests - unknown to Man - which gives rise to emotions of a proud and lofty character –⁵⁴

On 1 December the *Australian* returned to Macarthur's petition calling it a 'LETTER OF INSTRUCTIONS' to Earl Bathurst. Without mentioning Macarthur's name, the paper discredited the petition as being from 'the Oligarchial tribe of the Colony.' The newspaper rhetoric suggested the 'tribe'

⁵⁴ *Ibid.*

were rather unimportant - 'a broken down faction, who cannot, on the greatest emergency, muster above twenty strong, including all family connections'. Even so, the paper continued to devote column space to opposing them. In the text the word 'gentry' appears in its usual colonial connotation as a term of contempt. The influence in England of the Macarthurs was emphasised, and the paper claimed that some people had signed both the petition and the Address.⁵⁵

As the dinnerist crisis continued to echo in the newspaper columns a major literary event took place on 12 December, when the *Sydney Gazette* broke with Laurence Halloran. In a later court case between Halloran and Robert Howe the latter stated that 'Since the year 1822, he had had no peace from the plaintiff's pen, and had repeatedly rejected productions that would have left him in gaol all his life if published.'⁵⁶ Halloran had published much known, and much more anonymous work, in the *Sydney Gazette*. Since the creation of the *Australian* he had battled with that paper and with William Wentworth and Robert Wardell. With the *Sydney Gazette* closed to him, he turned to his onetime foe for publication. The change would have enormous implications for Governor Darling, his administration, and historians. As if to underline the fluidity of political allegiances and commitment of this period the *Gazette* carried a rumour that John Macarthur was attempting to set up a newspaper 'of the pure Merino stamp' and that Halloran had been engaged as editor and offered some suggestions for its name - '*The Aristocrat, or The Pure Merino, or The Exclusionists*.'⁵⁷

When the details of the Address and his father's own petition arrived in London, John Macarthur junior played his part in attempting to discredit the settler's Address. He forwarded his father's petition and the descriptions he had sent of the men who had been involved in the meeting and dinner to the Colonial Office. Perhaps the younger Macarthur had not seen a true copy of the Address.

⁵⁵ *Australian*, 1 December 1825.

⁵⁶ Case of *Halloran v. Hall* in the *Monitor*, 26 May 1826.

⁵⁷ Note that this usage of 'pure Merino' predates the entry in the *Australian National Dictionary* which offers a usage in the *Monitor* 24 November 1826. *Sydney Gazette*, 17 November 1825.

He complained that it purported to represent the views of the clergy, although none had signed it. He was misinformed, for the clergy were not mentioned by the Address. He pointed out that it was also supposed to represent the Magistrates but only two appeared – D’Arcy Wentworth and Robert Lowe, ‘who married a convict woman & is wholly connected with that party.’ He insisted that the opinions expressed were not those of the respectable settlers: ‘the opinions of the Emancipated convicts – or what, I think, I am entitled to call the Republican party – are not the opinions of the most Respectable part of the Community, and that the latter are most anxious to disclaim their violent & absurd demands.’ John Macarthur junior argued that these movements had to be checked and that the Governor should be armed with strong authority. (Could this have any bearing on the suggestion made by his elder brother Edward that a militia should be formed in New South Wales?⁵⁸) John tried to alert the Colonial Office to the seriousness of the occasion by offering his apologies ‘for expressing my unaffected alarm at the tone & temper with which the pretensions of the Emancipated Convicts are urged.’⁵⁹

Brisbane’s farewelling was politicised because of the influence it was believed he would assert in Britain. Embryo colonial politicians, with William Wentworth in the vanguard, loaded the man with insincere flattery to capture and direct his support for constitutional concessions. The squabbling over dinners offered Wentworth a political platform, the chance to add to his own reputation, and the pleasure of spiting John Macarthur. Unhappy at his recall Brisbane sought popularity. He sided with a political clique, championing their demands for reform, and gained immediate accolades of praise. The men who lauded him did so cynically, but in the offers of help they received in return they failed to realise that Sir Thomas may have been dealing with them in their own coin. The

⁵⁸ Edward Macarthur made the suggestion to Wilmot Horton in a letter dated 4 July 1825. Darling was asked to comment in Hay to Darling, 26 July 1825, *HRA*, series I, volume XII, p.39; Darling rejected the proposal in Darling to Hay, 1 February 1827, *HRA*, series I, volume XIII, p.63.

⁵⁹ John Macarthur junior, 11 July 1826, CO201/179. p.248.

Governor took his florid Addresses and departed, but he had raised high expectations for his successor to deal with. He had made promises which he must have known he would have difficulties honouring. If he broke those promises he would be far away when news of his betrayal was learnt, and it could be that the man who replaced him would reap the harvest of discontent he was sowing. In twelve months, if he was true to his word, the results of his actions would be celebrated in New South Wales. If he betrayed the hopes he had raised so high, any resentments over his duplicity could fall upon Governor Darling.

PART FOUR

Governor Darling's Sydney 1825 – 1826

Chapter Nine

Expectations and reality

Not for the first time, conflict and squabbling had disturbed the tranquillity of New South Wales. Personal animosities had lumbered into each other, the free press had been used against the unpopular 'Faction', and the Governor had supported one group of warring individuals against his enemies. Malice was comfortably entwined with political idealism. Ignoring any imperial argument concerning the penal character of the place, Sir Thomas Brisbane gave colonial liberals high expectations for the rapid political transformation of New South Wales. The antagonisms between 'colonists' and 'exclusionists' had caught hold of the editors' imaginations and the Dinnerist Crisis, according to them, had been concerned with the rights of the emancipists. It seemed the immediate legacy that one Governor was leaving for his replacement was a problem about the ex-convicts and their place in the new society.

Governor Darling and his party arrived in Hobart on 24 November 1825. Two of his wife's brothers, William and Edward Dumaresq, accompanied him. The Sydney papers were gutted for news as soon as they arrived and Edward, who was to remain in Hobart and take the position of Acting Surveyor General, against Darling's advice, deduced in his private journal that 'party spirit very high at Sydney the opposition papers very scurrilous & abusive & Mr Wentworth like a "Bull in a China Shop"'.¹ His comments no doubt arose from reading and discussing the news from Sydney with Lieutenant-Governor George Arthur.

The night before Darling sailed onwards from Hobart, on 6 December, seven women inmates escaped from their prison. A startled passer-by gave the alarm after seeing them tumbling from a hole broken through the wall as a police constable watched on benignly. Six were soon recaptured and sentenced, after

¹ Edward Dumaresq journal entries, 25 - 26 November 1825, AOT NS 953/373.

having their heads shaved, to a diet of bread and water, confinement to their cells, 'and to wear an iron collar for a week.'² Almost twelve months later Darling was to encounter enormous problems resulting from his use of iron collars on two criminals. The same use of iron collars now, in Hobart, drew no criticism from the press or concerned citizens.

As the *Catherine Stewart Forbes* sailed between Hobart and Sydney Darling, as Governor of New South Wales, prepared his first 'secret and confidential' despatch to Under Secretary Robert Hay.³ Isolated for months aboard the *Catherine Stewart Forbes* Darling had examined his official papers and reflected on the colony.⁴ His arrival in Hobart brought him recent dramatic news and political conversations with George Arthur and he painted a troubled picture of his colony. The previous December, when negotiating with the Colonial Office, Darling had argued for an increase in the salary being offered. Conditions in New South Wales, he suggested, justified more money for he would encounter 'dissensions of the most unpleasant and violent nature' which would make his position more exacting than that of any other officer. In this letter he also showed his own awareness that the colony was changing from being solely a large prison for he pointed out its future development was likely to be followed with interest by the House of Commons.⁵

Darling admitted to Hay that his views on his unseen colony were influenced by the Sydney newspapers and his conversations with Arthur. He also commented that the views he held were 'confirmed by the information I received at Hobart Town' which may suggest other sources of information, possibly a letter from his Private Secretary, Henry Dumaresq. Brisbane, following Macquarie's precedent, had written to Earl Bathurst assuring him that he was

² *Hobart Town Gazette*, 10 December 1825.

³ Colonial governor's wrote 'public' despatches to the Colonial Office, which could end up being quoted in the Parliament, and private and secret communications in which they often wrote more freely of matters contained in their open documents.

⁴ On 10 August 1825 Edward Dumaresq noted that the Governor had recovered from illness and was reading over his papers. Edward Dumaresq's Journal, AOT NS 953/372.

⁵ Darling to the Colonial Office, 7 December 1824, CO 201/155, pp.382 – 383.

leaving the colony 'in a state of tranquillity and prosperity'.⁶ Darling presented a gloomy contrast, claiming that Brisbane's departure had driven New South Wales into political turmoil. Sir Thomas's 'tranquillity' was opposed by Darling's claim that the colony was rent by 'serious dissension' and 'that Party feeling never was before carried to such height as at present.'⁷

Having read Bigge's 'Reports', and with no personal experience of New South Wales, Darling assumed that the major political division was between the 'old Settlers' and the emancipists. The newspaper reports suggested that during the recent controversy the emancipists had 'gained an ascendancy'. Darling recognized their talents and achievements. He conceded that 'the union of superior talent, wealth and numbers in any one Body must preponderate, however the Community may be composed' and believed that the pre-existing dominance of the old settlers over the freed convicts had been overturned. He showed himself sympathetic towards the emancipists and dismissed the assumed rights of the old settlers: 'Their ground is not tenable, and it would be more prudent in them to abandon it at once, rather than persevere in an opposition, which must perpetuate those dissensions by which the Colony has been so long distracted.' Without desiring 'the most remote wish of inducing, much less urging a familiar intercourse with Men, who have forfeited their Claim to good character' Darling could find no reason for treating them, as he believed they had been treated by the old settlers, and thus 'making them feel that reformation is unavailing.' He offered Hay a rhetorical question, 'Do they suppose that the Emancipists have no rights, but are for ever to be regarded as Men under the immediate Sentence of the Law?' and provided his own answer: 'I should but ill discharge my duty, I think, if I were not to afford them, as a Body, the Countenance and protection of the Government.'

⁶ Macquarie to Bathurst, 21 July 1821, *HRA*, series I, volume X, p.531; Brisbane to Bathurst, 18 November 1825, *HRA*, series I, volume XI, p.902.

⁷ Darling to Hay, 'At Sea', 10 December 1825, *HRA*, series I, volume XII, p.81.

Darling told Hay that his actions would be modified by the new situation he found there. In doing so he may have been attempting to obtain a freer hand for himself, and forestall potential criticisms from Downing Street:

The recent occurrences have produced so total a change in the Political situation and Character of the Colony that it would be injudicious in me to prescribe myself any particular line of Conduct. The course, which might have been proper a few months since, may now be unwise and impolitic in the extreme.⁸

Accepting the newspaper assertions that the settlers' dinner for the Governor was offered by the emancipists, Darling noted that almost all the senior officers of the Government had been present. Even the Chief Justice had sent his apologies when ill health had prevented his attendance. He did not tell Hay that his own Private Secretary, Henry Dumaresq, had attended. Darling described the events as a 'Crisis'. In his analysis he appears to have been misled by the papers into thinking that the emancipists formed a coherent oppositionist body or 'Party'.

The most obvious threat to Darling's government appeared to him to be from the usual quarter, John Macarthur. Young Edward Dumaresq had mentioned Wentworth's wild behaviour in his journal but Darling passed over his account of the dinnerist crisis without mentioning his name. Bitterness between previous governors and the Macarthur family suggested where any future problems for his own administration might come from. 'Old Settlers' was a euphemism for Macarthur and his political allies. To make this explicit for Hay, Darling wrote that he was resolved to 'act according to circumstances for the benefit of the Colony at large, without any view of becoming popular with any Party ...' The Colonial Office bureaucrats were making John Macarthur a member of Darling's new Legislative Council, and the dinnerist crisis, as represented by the press, seemed to have Macarthur maintaining his old position as a colonial perturbator. Darling told Hay of local animosity towards the

⁸ *Ibid.*, pp.81 - 84.

Macarthur family. Without suggesting that he himself was concerned by their influence he ascribed the dislike of them as being

founded on a belief, amounting to a conviction in the minds of the Inhabitants in general, of the access, which this family has to your Department, and the means which they possess of insidiously conveying false and injurious impressions of Persons and things.⁹

In this private despatch Darling did not discuss the political claims, for trial by jury and representative government, which had been raised during the dinnerist crisis. That other matter, the validity of colonial pardons in restoring civil rights which the case of *Field v. Eagar* had brought into the colony in 1820 was clarified for him, in a despatch written that August by Bathurst as Darling was sailing towards Australia:

It is conceived that in the Colonies a pardon under the public Seal is precisely equivalent to a pardon under the Great Seal in England, because the power of pardoning is expressly delegated to the Governor by an instrument under the Great Seal.¹⁰

With this matter out of the way the information did not answer the further questions that were sure to be raised in the colony - did the restoration of civil liberties make an emancipist, who could give an oath and appear in a colonial court, eligible to act as a colonial juror? and would he be enabled to take a seat in any future representative assembly?

On Sunday 18 December, as the *Catherine Stewart Forbes* was making its way up Sydney harbour through pouring rain, another Wentworth bastard was taking the trouble to be born. On the Petersham estate William Wentworth was renting from John Piper his mistress, Sarah Cox, was giving birth to their first child, Thomasine.¹¹ Presumably the illegitimate girl was named after Sir Thomas Brisbane. It was an honour in doubtful taste but a good old fashioned Botany Bay joke.

⁹ *Ibid.*

¹⁰ Bathurst to Darling, 24 August 1825, *HRA*, series I, volume XII, p.56.

¹¹ Liston, *Sarah Wentworth*, p.17.

The continuing heavy rains delayed Darling's official landing until 20 December but they did not prevent him from slipping ashore on 19 December to swear-in and hold his first Executive Council meeting. The weather improved on the Tuesday and the vice regal party were able to leave the fetid air of the *Catherine Stewart Forbes*. Eliza Darling and her brother Captain William Dumaresq were reunited with their older brother Henry.¹² Although a modern historian described the landing as 'almost reminiscent of that extended to the representatives of the British Raj in India' this was not the case for the event was ceremonial but relaxed and low key.¹³ Local patriotism and the emotion of empire rose with the pageantry. Band music (an element of popular culture), military uniforms, best dresses, clean clothes and the crush of people to see their new British governor. There may have been some reserve in the people's welcome after the warmth of Brisbane's departure. The *Sydney Gazette* made much of a claim that no cheering greeted the governor's landing, remarking that interested observers were thoughtful: 'ALL AUSTRALIA MUSED!'¹⁴ Perhaps their reporter was hard of hearing for the *Australian* reported some cheering on the road.¹⁵ Empire was both an adventure and an emotion lived by colonists. The military band and damp panoply inspired patriotic sentiment directed simultaneously towards Britain and Australia. The experience and emotions of empire, which were to last in Australia until the 1960s, forged both a strong Australian nationality and a simultaneous identification with and a love of Britain.

Ceremony was to be an important arm of the Darling administration, but it was also emotion and entertainment for his Australians. The procession formed, as the existing government establishment met the new arrivals, and they moved the short distance between the landing place and Government House. The band of the Buffs combined music of empire with Australian music playing 'See the

¹² *Sydney Gazette*, 22 December 1825.

¹³ John Molony, *The Native-Born: the first white Australians* (Carlton South, 2000), p.85.

¹⁴ *Sydney Gazette*, 22 December 1825.

¹⁵ *Australian*, 22 December 1825.

Conquering Hero Comes!' and 'Welcome to Australia!' The *Australian's* readers were told 'how the Governor marched at the head instead of the tail of train' and, with the slightest hint of republicanism, that 'whilst we have a monarchical government, we must have monarchical forms and observances.'¹⁶ The Governor's arrival was another new beginning and a continuing of empire. Even the *Australian* acknowledged the utilitarianism of all the 'parading' through the crowded streets for they 'all tend to produce an effect and a respect, of which we are ready to admit the necessity.'

Using weapons, more efficient for ceremonial purposes than killing invading Frenchmen, the gunners provided a noisy salute. Darling's subjects sought a first view of the man and his family and the *Australian* described him as having 'a smooth and placid firmness, without anything of the stern or overbearing in his composition.' The music was seductive and many of the sightseers could not resist the temptation of following the band and joining onto the end of the procession. When the vice regal party arrived at Government House an attempt was made behind them to close out the hanger-ons. The noise and disturbance was heard by Darling who gave one of his first commands in New South Wales and had the gates left open to allow the commons into his pleasure grounds.

Inside Government House he was presented to the civil and military officers and the new Legislative Council was sworn in.¹⁷ Each of the men agreed not to disclose 'directly or indirectly' any matter discussed in Council and swore 'that I will, to the best of my judgment and ability, faithfully advise and assist the Governor.'¹⁸

In reporting his arrival the *Australian* combined two texts from different reporters linking the accounts with brief comments. The first was satirical (could

¹⁶ *Ibid.*

¹⁷ Stewart to Bathurst, 21 December 1825, *HRA*, series I, volume XII, p.127.

¹⁸ *Minutes of Proceedings of the Legislative Council from 1824 – 1831 Inclusive ...* (Sydney, 1847), p.1.

it have been by Laurence Halloran?) and the second a straightforward description of the event. The paper may have been offered two interesting reports and, not wishing to waste them, had published both. Or it may not have decided what its attitude towards the new administration was to be. Perhaps it was also offering the new Governor a subtle warning that he should not assume that he would be able to take the support of the paper for granted. Whatever the intent the Governor, as will be seen, was not amused.

In his first Proclamation, published on the day he landed, Darling alluded to the rifts present in colonial society. After naming the members of both the Executive and Legislative Councils, he called for a 'Spirit of Concord' from the colonists, without which his efforts to advance their welfare would be useless, and asked them to 'cordially unite in cultivating those feelings of mutual good will' in order to fully benefit from 'His Majesty's paternal solicitude for their welfare.'¹⁹ That night Sydney was illuminated with candles and lamps displayed in windows, and firecrackers were let off to celebrate his arrival.²⁰

It would take a time for the colonists to view their new Governor and make up their minds about him. When they did, their responses were divided. In traversing the 1820s most historians have sided with Darling's enemies. Historians have decided opinions on the man, and his administration: 'In public Darling was icy, formal and unbending', he was 'a martinet', a man 'forbidding in appearance' with 'a coldness of the heart', who headed a 'repressive regime'.²¹ A

¹⁹ Darling to Bathurst, 21 December 1825, *HRA*, series I, volume XII, pp.128 – 129.

²⁰ *Australian*, 22 December 1825.

²¹ Manning Clark was responsible for 'a martinet', 'forbidding in appearance' and 'a coldness in the heart' and John Ritchie for the description of Darling as 'icy, formal and unbending'. Michael Sturma detected the 'repressive regime'. For a striking non-academic example see Marcus Clarke, 'Governor Ralph Darling's Iron Collar' in Gordon Neil Stewart (editor), *Australian Stories of Horror and Suspense from the early days* (Sydney, 1978).

In the half page he devotes to Darling in his book, *A Concise History of Australia*, Professor Stuart Macintyre gets wrong the number of members of the first Legislative Council and accuses Darling, who arrived in Sydney in December 1825, of excluding emancipists from jury duty thus provoking Michael Robinson to raise the toast, 'The land, boys, we live in', at the Anniversary Day dinner on 26 January 1825'!!

Clark, *A History of Australia*, volume II, p.61.

Ritchie, *The Wentworths*, p.217.

Stuart Macintyre, *A Concise History of Australia* (Cambridge, 1999), p.74.

legal historian summed him up as 'Paranoid, defensive and intolerant of criticism, Darling had the instincts of an autocrat.'²² Other writers, using a wider selection of primary sources, have suggested a more sympathetic reading of his character, and administration.²³

One piece of evidence used to justify the dismal portrayals of Governor Darling is a condescending confection of malice. It is a small collection of papers supposed to have been written by Sir Francis Forbes's widow (who died in 1886), and 'edited' by George Forbes. Held in the Mitchell Library it is a compilation of handwritten notes and a typed text entitled 'Sydney Society in Crown Colony Days: being the personal reminiscences of the late Lady Forbes'.²⁴ If the brief notes were made by Lady Forbes the typescript has been creatively expanded from them – in it old scores are settled, historical views have been tempered by hindsight, and Sir Francis Forbes shines heroically. From such a doubtful source little credence should be placed on the venomous pen portrait of Governor Darling and its use should be accompanied by severe reservations - this has not always been the case.

When the mailbags from the *Catherine Stewart Forbes* were unloaded, one of the disputed principles of the dinnerist crisis seemed to have been resolved. Reading his letters the editor of the *Australian* discovered that English law had been amended and that, all the while colonists had been disputing, it seemed that emancipists with absolute pardons or who had served their sentences were entitled to act as jurymen.²⁵ If this was the case it had not been relayed to the Governor, and the matter would only be discussed in Council late in 1826.

Sturma, *Vice in a Vicious Society*, p.15.

²² Brian Kercher, *An Unruly Child: A history of law in Australia* (Sydney, 1995), p.85.

²³ Civil antidotes will be found in –

A.G.L. Shaw, *Heroes and Villains in History: Governors Darling and Bourke in New South Wales* (Sydney, 1965); Fletcher, *Ralph Darling*.

²⁴ Lady Forbes, edited by George Forbes, 'Sydney Society in Crown Colony Days: being the personal reminiscences of the late Lady Forbes', typescript held in the Mitchell Library.

On legal matters covered by the text J.M. Bennett notes, 'Lady Forbes recollections – long after the event – of a variety of matters purely legal, tended to be unreliable': Bennett, *Some Papers of Sir Francis Forbes*, p.190.

²⁵ *Australian*, 22 December 1825, 29 December 1825.

That midsummer William Wentworth had both private and public duties. On 15 January he and Sarah Cox christened Thomasine at Saint James's Church.²⁶ Their actions were no doubt noted by Governor and Mrs Darling at Government House, where such a display would have been ascribed more to moral laxity than an attempt at aristocratic hauteur.²⁷ Later that month Wentworth took a leading part in a public meeting to frame a welcoming address for the Governor. These public meetings were offering Wentworth a platform and an audience for repeating his well known views.

This meeting too was held in the Castlereagh Street Court House.²⁸ The numbers were not as high as had been anticipated. Seeking an excuse the *Australian* blamed the continuing rain. The polarising dinnerist crisis may have made some settlers sensibly wary of taking part in a meeting which could be politicised by the usual Wentworth antics and could antagonise the new Governor. If Wentworth was establishing a personal political following, at this point in his career it was not strong enough to fill the Court House.

After the meeting opened at noon Wentworth revealed there had been some disagreement over the subject matter, but that agreement had been reached that something more than the 'merely congratulatory' was required in the Address. These are tantalising hints of backroom machinations. Who were the faceless men who had decided the event should be politicised?

At the public meeting to vote Brisbane's farewell address, political matters had been broached with some initial diffidence. This time there were no reservations. Wentworth had prepared a political oration. He made the usual arguments for trial by jury and representation but now spoke of Darling with bitterness. At the Brisbane dinner Wentworth had used a friendly tone towards

²⁶ On 15 January 1826: Liston, *Sarah Wentworth*, p.17.

²⁷ On his ascension to the throne in 1830 Charles Greville described William IV as being 'surrounded by a numerous progeny of bastards': Greville, *The Greville Memoirs*, volume II (London, 1874), p.2.

²⁸ For a completely different account of this event see Ritchie, *The Wentworths*, pp.218 – 219.

Darling, and Henry Dumaresq. In the short period of time since the Governor had arrived in Sydney, Wentworth had become critical.

Darling's arrival soured Wentworth's expectations for rapid political advancement. He had not been named to the Legislative Council by the new Governor.²⁹ Unlike Cambridge, Sydney offered no second prizes. This first attack on the 'Spirit of Concord' Darling had called for sprang from the composition of the Legislative Council he had installed. The only field for the civilian colonists to play an important role within the new administration was on the Legislative Council; the Executive Council was made up of government officers. Wentworth was forgotten as places were occupied by the settlers John Macarthur, Robert Campbell, and Charles Throsby.

In the lead up to the meeting the *Australian* expressed dissatisfaction at the composition of the Legislative Council and especially the inclusion of John Macarthur: 'As it is we cannot but participate in the general feeling of displeasure which is evinced by all classes at his occupation of that conspicuous station to which he has been appointed.' It was argued that there were others of equal wealth and property (Wentworth?) who had been ignored. The paper provided a face saving excuse for Wentworth's exclusion by speculating that the decision on the composition of the Council had been made from the state of the colony as long ago as early 1824, that is before Wentworth had returned to Sydney.³⁰ But this was not so.

Darling's political problems lay in the actions of his predecessor. Brisbane, not Darling, was responsible for the men nominated to the new Legislative Council. Brisbane had replied on 1 November 1824 to Earl Bathurst's request to nominate suitable men and proffered ten possible candidates – John Macarthur

²⁹ The new Legislative Council was raised from five to seven and consisted of William Stewart, Francis Forbes, Thomas Hobbes Scott, Alexander Macleay, John Macarthur, Robert Campbell senior, and Charles Throsby.

³⁰ *Australian*, 12 January 1826.

headed the list.³¹ Wentworth's exclusion was attributable not to Ralph Darling but the man for whom he had named his daughter, and whose name he was again defending at the public meeting, Thomas Brisbane.

The historian A.C.V. Melbourne claimed Wentworth was offered a place on the Legislative Council by Darling, but that he refused in order not to compromise his political aims.³² This tantalising assertion was made without supporting references and is unlikely. The numbers of the Council were increased to comply with the 1823 Act and its membership was prescribed by a royal warrant dated 17 July 1825.³³ The members were sworn in on the day he landed, not leaving time, even for a man of Darling's energy, to compose 'overtures' to Wentworth and for them to be considered and refused; even if the royal warrant had made provision for Wentworth's appointment – which it did not. Again, this first indication of petulance in the behaviour of Wentworth towards Darling was probably because he was offended at not being included on the Legislative Council. Hurt personal pride, not some elusive pro-emancipist politicking, seems to have caused the first signs of a barrier being erected between the two men by William Wentworth.

Wentworth criticised the new additions to the Legislative Council: 'this change had not been for the better (cheers).' He called for an assembly chosen by the colonists, and championed the native born by arguing for their rights in the

³¹ Bathurst to Brisbane, 19 January 1824, *HRA*, series I, volume XI, p.195; Brisbane to Bathurst, 1 November 1824, *HRA*, series I, volume XI, p.407.

³² The paragraph, in which the only reference cited refers to the Warrant for the extension of the Legislative Council dated 17 July 1825, reads: 'Civilian members had been added to the Legislative Council in 1825, and the door was open to Wentworth. Indeed, he wavered for a time. Inclusion in the Legislative Council would mean friendship with the Governor; it would give him moderate influence, assured social status, and respectability. But it would force him to discard his carefully thought out plans, and to forego the pleasure of wreaking vengeance on the Macarthurs and the exclusive class. Moreover, it would make him a dependent of the government; it would definitely close the road to power. Wentworth was shrewd enough to know that the system of privilege could not last indefinitely; he craved for recognition, and, he knew that the greater prize would only be won by waiting, but he found it difficult to reject the immediate though somewhat petty triumph. In the circumstances he hesitated to commit himself irretrievably to a policy of opposition. He made no response to Darling's overtures; but, on the other hand, he showed no particular vigour in his opposition to the government.' A.C.V. Melbourne, *William Charles Wentworth* (Brisbane, 1934), pp.47 – 48.

³³ Warrant appointing Members of Council, *HRA*, series I, volume XII, pp.22 – 23.

distribution of crown lands.³⁴ Both were safe and popular political claims.

Wentworth treated the man whose daughter he had once planned to marry, and whose ideas he had cannibalised for the first edition of his book, as the source of all wrongs in the colony. Wentworth could not have known that even before he arrived in Sydney Darling was resolved to treat Macarthur with caution. On his arrival further warnings of Macarthur's possible influence would also have come from his Private Secretary, Henry Dumaesq, who was aware of Brisbane's problems with Macarthur, and also from Chief Justice Francis Forbes.

Because of Macarthur's appointment to the Legislative Council, and that of his friend Archdeacon Scott, Wentworth made the formal connection between the governor and these members of the Council appear suspect and subversive. He claimed that the relationship made the governor and the Macarthur party 'as it were officially connected'. He referred to 'exclusion and distinction' and, in different tones to those he had used in November, presented Darling with a warning. Wentworth's speech has been misrepresented by historians who claim that Wentworth was calling Darling a member of the Tory party³⁵:

If the Governor could only shew then that his intentions were good, however erroneous his measures might prove, he would find that the Colonists would not condemn him, but would give him full credit for the rectitude of his motives. He would find them very different censors from that party with which he (Mr Wentworth) was sorry to say His Excellency was, at it were, officially connected. (Hear, hear!) He would find that they (the Colonists) would not be the first to rake up, upon the last day of his Administration, only the mistaken and erroneous acts of his Government, so that his Administration were only carried on with common fairness and impartiality, and not upon those baleful principles of exclusion and distinction, which there was no doubt would be sedulously impressed upon his mind. (Hear, hear!)³⁶

³⁴ *Australian*, 19 January 1826.

³⁵ See, in example, Ritchie, *The Wentworths*, p.219: Wentworth 'regretted to inform his audience that His Excellency was officially connected to the Tory party.'

³⁶ *Sydney Gazette*, 16 January 1826.

Manning Clark, crediting the *Australian* for his own vision, describes Wentworth as being 'swept on to greater recklessness by the drunken shouts of approval his superb oratory had aroused.' Clark, *A History of Australia*, volume II, p.65.

Wentworth defended Governor Brisbane, and revealed that the ex-Governor had taken documents which would reveal the falseness of the charges made against him.³⁷

The *Australian* was published some days after the first report of the speech appeared in the *Sydney Gazette* and carried more of Wentworth's spiked comments, which had not appeared in the other paper. He claimed Darling had suffered unpopularity and then popularity at the Isle de France:

It is however only fair to think he saw his errors and renounced them. It is not a reasonable conclusion to suppose, that because he rendered himself popular in a French island, that, he would render himself so in an English one.³⁸

Darling, and his party, troubled the established order. The arrival of the new British Governor forced Wentworth to the side. A new administration with new men who were unknown in the colony was being implanted. The changing of Governors represented a social and bureaucratic upheaval within the colony. New men represented distinct changes within the official hierarchy, a place on the Legislative Council would have made Wentworth a prominent insider, whereas his neglect left him an ambitious and disruptive outsider.

Darling and his ladies and his gentlemen were intruders who would sometimes roughly, sometimes gently, remake Sydney society and the government administration. The Governor was a disruptive interloper as he assumed the new office and threatened the established modes and manners. His takeover of the colony was the disconcerting installation of a new branch manager from the Empire's distant head office. The British governors arrived in New South Wales as *Deus ex machina*. They came with no direct knowledge of their fiefdom, or even particular interest in the place, but with the influence of a great figure in England. They were given a comfortable salary, although not always satisfied with it, several houses, servants, and local power. For some years they would be listened to with respect and obeyed, and then return, usually with

³⁷ *Australian*, 19 January 1826.

³⁸ *Ibid.*

decreased reputations, to England. Few of them had successful careers after Australia. When Sir John Franklin was named Governor of Van Diemen's Land he was told by Sir Edward Parry, who had served the Australian Agriculture Company in New South Wales, 'you are the third Australian governor to whom I have said it, that the Australian Colonies are not fit for any gentleman to govern.'³⁹ Presumably Ralph Darling was one of the three. The governors held powers that could, it was increasingly believed, have been better used by a colonial élite who themselves believed that they could do the job better. The Governor would rule, he would depart, the settlers would stay. Colonial Australian history was made by both temporary and permanent residents. The Governor was important from arrival to departure. His own history before New South Wales was of little interest, his story after New South Wales did not concern his onetime subjects. Some of the new colonial usurpers who accompanied Darling had spent many years outside England. Henry Dumaresq, in example, had passed over half his life abroad in Spain, Portugal, Canada, Belgium, Mauritius. Years spent within military discipline had no doubt given him firm ideas on leadership and responsibility.

The Address was presented to Darling, and his Aide-de-camp, Thomas de la Condamine, by a deputation in the audience chamber at Government House. The Sheriff, John Mackaness, introduced him to the members of the deputation. If Darling and Wentworth had not met before then here they came together as Wentworth read the Address, and Darling gave his response.⁴⁰ Wentworth's oration at the meeting had been hectoring and ill mannered, the Address he presented to the governor was a political document. It said that the colonists would have preferred to have themselves nominated the non-official members of the Legislative Council – by which means Wentworth would have surely gained a seat on the Council. It appealed for a locally determined Legislative Council to

³⁹ Lady Franklin's Diary 1841, Scott Polar Institute Library, Cambridge, MF 248/91, p.82.

⁴⁰ *Sydney Gazette*, 23 January 1826.

legislate for the colony and asserted the rights of the native born who it claimed were being neglected by the government and discriminated against in favour of the emigrants. While calling for the granting of free institutions it asserted that a larger Legislature would better govern the colony, and that the body should be free of 'party spirit, private interests and family-jobbing'. The privileges enjoyed by the two Canadas and the West Indies were pointed to and it was claimed that the colonists of New South Wales had even greater right 'for the enjoyment of the British Constitution in all its plenitude'.⁴¹

Darling handled the political Address diplomatically. He replied that he had not had the chance of forming an opinion on the matters raised but that he would communicate their wishes to the Colonial Office. He assured the delegation that he intended to work 'for the prosperity and happiness of all classes of the Inhabitants'.⁴² As he had surely read the newspaper reports of Wentworth's oratory at the public meeting, his personal opinion of Wentworth must have been interesting. It would also be unusual if Darling was not at least a little offended by Wentworth's patronising tone towards him. Manning Clark described Darling here as exhibiting 'a characteristic frosty formality', but the primary sources do not convey this impression. John Ritchie echoes Clark in saying that he received the deputation 'with his characteristic *sang-froid*'.⁴³

If Wentworth knew something of Darling's role in the Isle de France he had little idea of Darling's opinions regarding the colony, and his actions were precipitous. On some points Wentworth and the Governor could have co-operated – an adversarial approach was neither necessary nor productive. In dealing with Darling William Wentworth made fundamental errors. He began by making assumptions about the man which were far from true. There was an essential difference between the two men. Wentworth had grown up rich and

⁴¹ Darling to Bathurst, 1 February 1826, *HRA*, series I, volume XII, pp.144 – 148.

⁴² *Ibid.*

⁴³ Clark, *A History of Australia*, volume II, p.65;
Ritchie, *The Wentworths*, pp.217 and 219.

privileged, and he clung to aristocratic connections to define his social status. Darling had been poor and worked his way up, making and keeping valuable contacts along the way. The Governor was once a private in the army, he had governed two colonies, reached the rank of General and would receive a knighthood.⁴⁴ Inherited money eased Wentworth's rowdy progress through the world; hard work aided Darling's rise.

Journeying towards Sydney in early December Darling had written of an unknown colony. At the end of January he wrote to Lieutenant Governor Arthur in Hobart. He again expressed his desire to favour no party. He linked the names of Wentworth and Wardell, although also suggesting that Wentworth's contact with the *Australian* was slight, and revealed some dissatisfaction with the manner in which the newspaper had dealt with his installation as governor:

I believe Mr Wentworth has but little to say at present to the *Australian* – I supposed Dr Wardell to have intended his notion of my arrival and landing as Wit – and as it was in such bad taste, I left him to the enjoyment of it – He is I conclude laying-by to see what Party I espouse – But I shall disappoint him, and perhaps others, by not adopting any Party – It may be said in this case, that I shall have no adherents – But people in general look to their own interest, and I have no *jobs* which require the support of others.⁴⁵

After three and a half months experience of the colony Henry Dumaresq, who had observed the huffing and puffing surrounding Brisbane's departure, suggested to his mother that colonial realities and newspaper impressions were very different things:

I think I have already mentioned, that the Politics of this place are by no means of the nature these Journals would induce you to believe – People have too much to engage them, to care one straw about what is going on, without the sphere of their immediate duties, and it is only the Editors of the Newspapers – who are Politicians, and they have their purpose in being so.⁴⁶

⁴⁴ Fletcher, *Ralph Darling*, pp.4 - 5.

⁴⁵ Darling to Arthur, 27 January 1826, ML A2167.

⁴⁶ Henry Dumaresq to Ann Dumaresq, 5 February 1826, ML A2571.

His views, valid and credible, capture his typically conservative refusal to confuse words and actuality. Where the papers had depicted a politicised and divided population the situation, to this observer, seemed less intense. The turmoil of Brisbane's last days appeared to have subsided and the threatened social war, of the emancipists versus 'exclusionists', had not broken out. Dumaresq, and the Governor he advised, had reason to face the remainder of 1826 with confidence. There seemed no local problem which could not be met with firmness and determination.

Chapter Ten

Family and government

For the liberal activists campaigning to determine how New South Wales would be governed in the future, the governor posed a problem. They were concerned not only with changes in his role, but how he should be dealt with in the present. Rationally there were at least three choices available to them. He could be ignored, and their arguments could be passed directly to London. They could seek his help as an ally, as (it seemed) they had successfully collaborated with Governor Brisbane. They could oppose Darling, and use him to represent all that was wrong with the old method of running the colony as a prison. Politics is seldom conducted with a clear head, or the workings of pure theory, and their relations with him were shaped by personal concerns.

Darling, and the men and women closest to him, were conservatives. In politics they supported the Tory party. Liberals, describing themselves as Whigs or radicals, opposed him. In Darling's Government House the Whig Chief Justice was an insider by rank and an outsider in his political beliefs and his social pretensions. The Tory Governor and Whig Chief Justice would work well together throughout most of 1826 but both men had rigid, and conflicting notions about their official positions. Darling had a soldier's idea of the hierarchy of command and believed subordinate officers should cheerfully support their commanding officer. The word 'cheerfully' occurs in both the Darling and Dumaresq correspondence and had strong meanings for them. Could it be a class word? The French nobility always assumed an air of good humour when present at court. Was cheerfulness an element of good society? And, given their backgrounds, could it have military connotations, viz., a subordinate would be expected to carry out instructions 'cheerfully.'

In Darling, the Colonial Office had selected a military officer and not a lawyer's clerk as governor. His grasp on legal niceties was slim. To Darling the Chief Justice was a superior government officer who would supply him with this want. The Chief Justice revolted against this interpretation. He was concerned to uphold the independence of the judiciary and oversee the expansion of the legal system. Forbes noted that the Chief Justice took colonial precedence after the Lieutenant Governor, and would try to have the latter position abolished.¹

Chief Justice Forbes had naïve personal desires for power and popularity and misread toadying newspaper praise as public favour.² He did not recognize that he occupied a powerful position which attracted flattery and compliments from men who fed his vanity for their own ends. Forbes was courageous, intelligent, politically aware, and impractical. A thin-skinned man with a heavy burden of hubris, he held the power to thwart the Governor. In his own field Forbes was an able (but not infallible) law man, but he was unaware of the realities of commanding men or a colony. He was repulsed by the Governor's interfering and reformist regime and blind to the daily practicalities with which Darling had to cope.

Ralph Darling was in a hurry to transform the colonial administration. He had been a soldier of battles and the desk. In New South Wales he carried out a bureaucratic revolution. In the first months of his administration his Private Secretary touched on the reformist zeal of the new administration when he confided to his mother that '*Everything is to be done here.*'³ The sensitive, ponderous, formalistic judge was a person certain to take offence from the

¹ Forbes to Wilmot Horton, 15 December 1826, in Bennett, *Some Papers of Sir Francis Forbes*, p. 116.

² This is highly disputed territory. The portraits of Forbes in Currey, Bennett, and the *ADB*, offer a too favourable picture. A.G.L. Shaw suggests 'Prim, vain and somewhat of a poseur'. A balanced account of Forbes (less saintly and more human) appears in Brian Fletcher's *Ralph Darling* but this does not satisfy Dr J.M. Bennett. He suggests that those who note the (obvious?) flaws 'equally misunderstood the man, his stature, ability and devotion to public duty, as they also misunderstood the legal constitutional principles that guided his path and his actions.' Despite this stern rebuke it could be argued that Forbes's admirers ignore his veniality; and have been too impressed by the man's own excuses and self-satisfied appraisal of his achievements.

Shaw, *Heroes and Villains*, p. 21.

Bennett, *Some Papers of Sir Francis Forbes*, p. vii.

³ Henry Dumaesq to Ann Dumaesq, 6 March 1826, ML A2571.

sometimes brusque manners of the fast moving administrator. In the Brisbane government the governor and colonial secretary had come into conflict and their respective powers had been formalised for Governor Darling. However the 1823 Act offered new, and attractive possibilities, which Forbes found irresistible, for friction between an ambitious Chief Justice and a soldier governor. The Chief Justice could have been handled more gently by the Governor, but Darling, meeting dislike of Forbes amongst his intimates at Government House, little considered Forbes's sensibilities – or the malicious pen he wielded.

From November 1823 until December 1828 the Chief Justice conducted an exchange of letters with Robert Wilmot Horton, Under Secretary of State for the Colonies. At whose suggestion the correspondence was begun is unclear. In his first letter to Wilmot Horton Forbes referred to 'the privilege you condescendingly gave me'.⁴ Forbes's side of the correspondence, for only his letters have been preserved, is self-serving and revealing. During the period of their correspondence Wilmot Horton's position within the Colonial Office changed in 1825 when he gave up responsibility for New South Wales. The letters came to an end after Wilmot Horton left the Colonial Office in October 1827. The Chief Justice offered Wilmot Horton backdoor and privileged information about the colony while maintaining the fiction that his correspondence to London was 'allowed', and that knowledge of it was confined to himself and Wilmot Horton.⁵

In London Forbes's letters were not treated as a private matter. Wilmot Horton kept some of them in his own files, while others went into the public domain in the Colonial Office records.⁶ Forbes used the correspondence for gossip, and such official matters as requesting a land grant and an increase in salary. The Chief Justice held seats on both the Legislative and Executive Councils. As a member of the former he had sworn not to disclose 'directly or

⁴ Bennett, *Some Papers of Sir Francis Forbes*, p.32.

⁵ Forbes to Wilmot Horton, 26 November 1825, in Bennett, *Some Papers of Sir Francis Forbes*, p.94.

⁶ Bennett, *Some Papers of Sir Francis Forbes*, p.ix.

indirectly' any matter discussed in Council and 'that I will, to the best of my judgment and ability, faithfully advise and assist the Governor.'⁷ Forbes broke his oath and opened the doors of the Council room to Wilmot Horton (and posterity).⁸

The correspondence calls for caution in accepting, at face value, the political opinions expressed by Francis Forbes. The letters may not be a complete picture of Forbes's political thinking for Wilmot Horton was a Canningite Tory (a moderate liberal) and a member of parliament.⁹ Their self-identification as Whig and Tory placed them in opposing political camps. The historian J.M. Bennett has disputed this categorizing arguing that '[i]t is not particularly profitable, as Dr. Currey attempted to do, to fit [Forbes] into one of the categories of contemporary English party politics.'¹⁰ These categorising labels were important to contemporaries, and should be of at least equal importance to historians. The correspondence, on both sides, was a self-serving exchange which lasted only while the two men were of possible use to each other.

In December 1825 Forbes generously gave up his Macquarie Place house (he occupied the most expensive government owned house in Sydney free of charge¹¹) to the newly arrived Darling family while necessary repairs were carried out on the dilapidated Government House. Forbes's first impression of the new governor was positive and in February 1826 he promised Wilmot Horton that the 'new dynasty' would have his 'best counsels and earnest support'.¹² Presumably that was part of his job. Then, in early March, complaining of ill-health brought on by over-work he obtained a medical certificate from the emancipist Doctor

⁷ *Minutes of Proceedings of the Legislative Council from 1824 – 1831*, p.1.

⁸ See for example his account of the Legislative Council discussions, in his letter of 26 May 1826, of the problems encountered by the Bank of New South Wales (for other examples consult the index entries for Executive and Legislative Councils): Bennett, *Some Papers of Sir Francis Forbes*, p.114.

⁹ The differences in their political beliefs is downplayed by J.M. Bennett who claims the two men were 'of similar political views'. Bennett, *Some Papers of Sir Francis Forbes*, p.ix.

¹⁰ *Ibid.*, p.xi.

¹¹ Return of Civil and other Officers ... accommodated with Houses or Lodgings at the Public Expense, 15 August 1826, *HRA*, series I, volume XII, p.566.

¹² Forbes to Wilmot Horton, 6 February 1826 in Bennett, *Some Papers of Sir Francis Forbes*, p.96.

Bland and headed for Bathurst to recuperate. In his place Darling temporarily appointed judge John Stephen, the Solicitor General, whose health was also uncertain.¹³ Forbes's timing was faulty.

Early in his administration the social and working relationships of the Darling government were being established. Around the Governor his closest advisers, Colonial Secretary Alexander Macleay, Private Secretary Henry Dumaresq, Aide de Camp Thomas de la Condamine, were forming a tight-knit administrative block. Alexander Macleay arrived in Sydney in January 1826, he was an experienced public servant and noted entomologist who had been appointed Colonial Secretary by Earl Bathurst. It was one of his better selections, for Macleay was an intelligent and hard working officer whose talents meshed well with Darling's.¹⁴

Forbes did not fit. To the hard working Government House party it may have seemed that despite his constant complaints of over-work he lacked their shared commitment to the remaking of the colonial administration. The Government House party were linked by enthusiasm, talent, a shared taste for hard work (cheerfully carried out), and personal, lasting, friendships. The mutual esteem may be instanced by Fanny Macleay's remark to her brother in April that their father was 'very much pleased with Colonel Dumaresq.'¹⁵

Before leaving Sydney in March Forbes was secure in his own importance and overconfident regarding his personal influence with the new governor: 'At present I can be safely spared for a few months – the Governor has proved himself to be a cautious, reflecting man, and is in possession of many of my views.' He also spoke well of Alexander Macleay: 'I like his Excellency much – and I much approve the secretary – I believe I am well with both, and I anticipate that we shall work marvellously well together.' They didn't.

¹³ Darling to Bathurst, 1 March 1826, *HRA*, series I, volume XII, p.196.

¹⁴ *ADB*, volume II, p.177.

¹⁵ 21 April 1826. Fanny herself had not yet decided and referred to Henry Dumaresq in the same letter as 'The ill behaved beast'. Earnshaw and Hughes, *Fanny to William*, pp.52 - 53.

In the same letter to Wilmot Horton the Chief Justice drew attention to his desire for public approval.¹⁶ He enclosed two copies of the *Australian* which spoke flatteringly of him when referring to his forthcoming absence and one to the temporary appointment of the Commissioner of the Court of Requests: 'I believe, *conscientiously*, that in both cases they speak the voice of the public.'¹⁷ To Wilmot Horton he justified the opinion he held of himself:

You will say I have rated myself rather high – perhaps I have – but I state a fact of which I believe you must be fully aware, that I have the entire confidence of the government of the community, and whatever may be the merits of my counsels, they at least carry a greater weight than any person's, or perhaps body of persons', in the colony – this is a simple fact – *valet opinio regina et gubernatrix humanorum* [J.M. Bennett's translation, 'and opinion is the regent of human affairs.']¹⁸

Aware that his absence could be seen as a weakness, Forbes promised Wilmot Horton that when recovered he would work on the rules and regulations for the practice of the Supreme Court, 'and the draft of a new act, when the present New South Wales act will expire.' He made no mention of involving the Governor in these actions. The new Act which would be important to the continuing governance of New South Wales, and Darling should have been aware of the propositions and alterations being considered by the Chief Justice. That he was not involved would add to the later frictions between the two men.

Preparing to leave for Bathurst, Forbes requested a land grant from Wilmot Horton and permission to buy extra land to form a holding of ten

¹⁶ Note that Hay wrote to Darling and referred to Forbes's 'vanity and a love of popularity': cited in Currey, *Sir Francis Forbes*, p.336. Both C.H. Currey and J.M. Bennett strongly defend Forbes from this charge. Bennett claims that this character trait has been 'seized upon by historians' from remarks made by Governor Sir Charles Hamilton in Newfoundland where Forbes served as Chief Justice. He further alleges that the historians critical of Forbes may not have read all the letters and places Manning Clark, A.G.L. Shaw and Brian H. Fletcher in this category. Yet his defence is punctured by the letters he himself has published for they readily reveal the elements in Forbes character which was noted by contemporaries such as Hay. Bennett, *Some Papers of Sir Francis Forbes*, pp.viii and xi and footnote 36.

¹⁷ Francis Forbes to R. Wilmot Horton, 7 March 1826, ML A1819.

In his notes J.M. Bennett says that the copies sent of the *Australian* were 28 June and 1 July 1826. This seems unlikely as the letter is dated 7 March 1826. Bennett, *Some Papers of Sir Francis Forbes*, note 6. p.99.

¹⁸ *Ibid.*, Bennett p.97.

thousand acres. Did he make the same request to the Governor? Sir John Jamison was no friend of Forbes yet there may be some truth in the criticism of Forbes's self-interest he had made to de Bougainville in 1825: 'a resourceful man, but distracted from his duties by other occupations; he has limited knowledge of legal matters.'¹⁹ If this suspicion of self-interest interfering with his official work was part of the gossip of official Sydney, it is an aspect of the man which would have been badly seen by Governor Darling.²⁰

Forbes's absence at this early period of the new government was a tactical error. When he returned from Bathurst he found himself excluded from the Government House coterie and from playing the role he had anticipated in the government. His first letter to Wilmot Horton after his return to Sydney carried his first criticism of the new government. Although he continued to speak well of Darling, he disparaged the Governor's use of his two brothers-in-law, Henry and William Dumaresq, in his administration:

I am ostensibly, and I have no reason to doubt being truly, a favourite at Court – or to speak more exactly the Governor does me the honor to advise in the most unreserved manner with me upon most subjects of importance, whether they relate to the courts or the ordinary business of the colony – His Excellency is gentlemanlike in his manner, and business-like in his transactions – he is besides easy of approach, attentive to the counsels that are offered, and firm in the execution of his measures – all these are the best elements of a statesman, next to knowledge, and they will enable their possessor to gain that ultimatum with time – Shall I venture to throw in one little grain into the opposite scale? --- it is but this, he has unfortunately too many near connexions in the character of followers and expectants – if the present unmixed popularity of his administration receive any portion of alloy, it will certainly proceed from that cause.²¹

Darling's promotion of the Dumaresq brothers would make them easy targets for local spite. Yet the Governor needed a meritocratic public service. The

¹⁹ Rivière, *The Governor's Noble Guest*, p.96.

²⁰ For an example of self-interest and a questionable land deal see Chapter Eighteen.

²¹ Francis Forbes to R. Wilmot Horton, 26 May 1826, ML A1819.

Colonial Office gave him placemen and incompetents.²² His wife's brothers were ambitious and intelligent, practical and hardworking men on whom he could rely. His nepotism was based on necessity. The flaw in these men was their relationship with Darling. Their achievements became of lesser importance than their family tree. In making his testy criticism Forbes's did not consider that Henry Dumaesq had been working for Darling since 1819 or the trust that existed between the two men.²³

The Dumaesqs, Colonel Henry and Captain William, were charming, ambitious and talented. Like Darling they had been poor and risen by ability, hard work, and carefully maintained social contacts. They were Anglican in religion, conservative in politics. By birth they were within the English gentry, by their father's taste for speculation they were thrown into poverty after his death. Because he had been a colonel they were given military educations and army commissions. Thereafter the ranks they attained were through merit. The Napoleonic Wars had helped their careers. Henry had been a romantic hero of Waterloo, noted by Sir Walter Scott, and William, although a less forceful personality, had also made an appearance in contemporary literature. After the defeat of Napoleon he was the Staff Officer responsible for removing the statues of the horses looted from St. Marks and returning them from Paris to Venice. His actions were the subject of a poem by Mrs Hemans:

From thy proud dome again th' unrivalled steed,
Starts to existence, rushes into speed ...²⁴

²² In example W.H. Moore, Alexander Baxter, James Holland. See Brian H. Fletcher, *Ralph Darling*, p.261.

²³ Sir Henry Taylor was employed at the Colonial Office, and in his 1836 book *The Statesman* he advised against the practice: 'It seems to be almost universally allowed that in the choice of his private secretary a statesman may be guided mainly by considerations of personal intimacy, family connection, and the predilections of his wife and daughter. Yet is this an indulgence which a statesman who should thoughtfully consider his own interest would pause ere he permitted himself to accept ...' The case of Darling and Henry Dumaesq may even have contributed to his thinking. Henry Taylor, *The Works of Sir Henry Taylor: volume IV: Notes from Life; The Statesman* (London, 1883 [1836]), p.332.

²⁴ Felicia Dorothea Hemans, 'The Restoration of the works of art to Italy' a poem, by a lady, Oxford, 1816, in *The Domestic Affections and Other Poems*, Garland, New York, 1975, pp.15 – 16. In a letter to John Murray Lord Byron wrote that 'it is a very good poem – very.' See *The Works of Mrs Hemans; with a memoir of her life by her sister*, volume I (London, 1839), p.27.

Much of their lives had been spent outside England and after the Great War they found themselves seeking further opportunities to advance their careers.

Although the Dumaresqs would be caught up in great political storms, even in some of which they would be found at the very centre, politics was not the most important element in their lives. As Lord Hailsham has noted: 'Conservatives do not believe that political struggle is the most important thing in life.'²⁵ As they went about their business, raised families, cultivated gardens and worshipped God, they shrugged off dousings of colonial printer's ink.

Forbes's criticism of 'near connexions' raises the business of colonial nepotism. It was hardly a condition from which only Darling suffered. James Stephen was the Permanent Counsel to the Colonial Office and later an Under Secretary and was the nephew of Judge John Stephen in New South Wales. John Stephen's sons-in-law's were John Mackaness the Sheriff and Captain Robison, who was later to appear as an enemy of Darling's. The judge's son, John junior, was the Registrar of the Supreme Court until dismissed for allegedly perjuring himself in the Jane New case.²⁶ Darling's Private Secretary had been his brother-in-law but his replacement, Governor Richard Bourke, employed his own son. W.H. Moore was the Crown Solicitor and his brother Charles Dodwell Moore was Assistant Clerk and Judges' Marshall of the Supreme Court. Later Judge Dowling of the Supreme Court tried to have his brother appointed solicitor general.²⁷ Francis Forbes himself had been appointed to New South Wales '[o]ut of the friendship with Wilmot Horton',²⁸

The family connexions objected to by Forbes were not the only barrier to his playing an enhanced role in the government but it does indicate the friction between personalities. Forbes was officious and thin-skinned. Behind the vice-regal trappings the Government House party was a relaxed, informal group of

²⁵ Cited in McKenzie and Silver, *Angels in Marble*, p.34.

²⁶ Fifer, 'William Charles Wentworth in Colonial Politics', pp.127 – 128.

²⁷ The latter is noted by Currey, *Sir Francis Forbes*, p.312.

²⁸ Bennett, *Some Papers of Sir Francis Forbes*, p.ix.

people. Ralph and Eliza Darling surrounded themselves with an amusing group of military bachelors and young women who wanted social entertainments. Forbes, despite a pleasant wife, was a dull man who would not have been comfortable with the high spirits and relaxed formality. The baron de Bougainville had endured an entertainment at Macquarie Place and summed up his experience as a 'dreadful and boring dinner which seemed endless'.²⁹

For those at Government House the challenges of New South Wales were embraced with enthusiasm and a love for the new country and its opportunities. In March Henry Dumaresq was again writing to his mother:

There is a vast scope here, which I confess, has more charms for me than the narrow compass of your Snug little Island – and I have scarcely determined, whether the *interests* of a new Country do not overbalance the *comforts* and luxuries of the older ones – where every thing is artificial and so little remains to be done – “Nous verrons” –³⁰

On 1 May 1826 Governor Darling wrote another 'Private and Confidential' despatch to Hay which captures his perception of the evolving politics of the colony. By now he had had a little experience of the colony. His finding was that 'there is in fact but one Party, of which he [John Macarthur] is the head, and to which the Archdeacon, the Attorney General and the Surveyor General belong.' He asserted that there was no 'Party Spirit on the part of the Emancipists'. In support of this he revealed that when not one of them had been invited to be among the 200 guests present at the King's Birthday entertainment no-one, not even the *Australian*, had made a complaint of their exclusion.³¹ The historian John Hirst has claimed that:

the emancipist cause became transformed into a local liberalism and in time attracted increasing support from some professional men and emigrant landowners whose sympathies were aroused as much or more by the causes of English liberalism as of its local counterpart.³²

²⁹ Rivière, *The Governor's Noble Guest*, p.130.

³⁰ Henry Dumaresq to Ann Dumaresq, 6 March 1826, ML A2571.

³¹ Darling to Hay, 1 May 1826, *HRA*, series I, volume XII, pp.253 – 257.

³² John Hirst, *Convict Society*, p.163.

The inverse is just as likely. The greater force of colonial liberalism incorporated the so-called 'emancipist cause' within its rhetoric.

That dislike of Macarthur which may have been political on the part of Darling was more personal amongst other members of the élite. Alexander Macleay's daughter Fanny was more forceful in her observations to her brother, writing that she found Macarthur 'disagreeable' and that '[t]he very look of the man would make you shudder – at least it has that effect on me.'³³ Later in May she observed that '[i]t certainly was a wise measure to make McArthur one of the Council – He is a sad wicked being.'³⁴ With hindsight it may have been even wiser to have included William Wentworth.

While busy reforming the government service, Darling punctuated 1826 with public ceremonies. He used military uniforms, police uniforms, convict uniforms, naval uniforms, religious costumes, and army bands to entertain, impress, teach, punish, and warn. Writing to Lieutenant-Governor Arthur in March, Darling discussed the treatment of certain receivers of stolen goods. Considered as great a menace as the thieves themselves, Darling arranged a public and theatrical display to bring home a lesson to them and the prisoners:

I have had out the Troops – assembled the Convicts, and have done everything to render the Ceremony this Morning as awful and impressive as possible – The "Receivers", were paraded in front of the *Drop*, during the Execution; and were immediately Marched off under a Mily. Escort to the Hulk – These are all free people, and I consider the breaking up of this horde, a very important matter. I shall now detach the Troops, and try and put the thing down at once.³⁵

The Governor's views on ceremony were shared at Government House. Eliza Darling wrote to her younger brother Edward of the same occurrence stressing the teaching intent of the rite: 'the *manner* of the Execution it is hoped will have a great effect.'³⁶ Later in the same year the ceremony around the punishing of two

³³ 10 May 1826: Earnshaw and Hughes, *Fanny to William*, pp.54 – 55.

³⁴ *Ibid.*, 28 May 1826, p.56.

³⁵ Darling to Arthur, 7 March 1826, ML A2167.

³⁶ Eliza Darling to Edward Dumaesq, 9 March 1826, AOT NS 953/309.

soldiers would create a controversy from which the government would never recover.

Chapter Eleven

Calls for violence and heavier chains

In the newspaper pages of animosity and grievance the Darling government, throughout most of 1826, was pampered and praised and left in peace. As the journals supported him while abusing each other, and other members of the community, Darling saw them as a minor inconvenience. In retrospect, the period of calm was a lost opportunity to have put in place controls which later events made it almost impossible for him to implement. At the time it hardly seemed necessary.

That March Darling wrote to Lieutenant-Governor George Arthur in Van Diemen's Land supporting the latter's attempts to control his unruly public papers by an Act of Council. Darling's backing rested on a belief that Arthur was authorised to do so by a despatch from Earl Bathurst, which had been made out by the Colonial Office Legal Department.¹ Darling felt no pressing need to implement similar controls in New South Wales: 'We are so quiet here, that I have not thought of agitating the matter; tho' when I have more time, I may probably do so.'² In May he wrote to Under-Secretary Robert Hay telling him that what he had previously written about John Macarthur was now being echoed by Robert Wardell in the *Australian*. His own criticisms, written as he sailed from Hobart to Sydney, had been influenced by the anti-Macarthur rhetoric of the Sydney newspapers he had read in Hobart. The views of the Governor and the radical editor seemed so close that Darling assured Hay there had been no collusion or understanding between them, and that although Wardell had been a

¹ Bathurst to Darling, 12 July 1825, *HRA*, series I, volume XII, pp.16–17.

² Darling to Arthur, 24 March 1826, ML A2167.

dinner guest at Government House, 'in Common with other Gentlemen of his Class in the Colony', their personal contacts had been limited.³

The Governor had given a dinner to mark the return to Sydney of Chief Justice Forbes after his illness, and convalescence in Bathurst. Amongst the law officers and members of the bar invited was Robert Wardell, but his presence offended Attorney General Saxe Bannister who refused to attend. Darling reprimanded Bannister - while accepting his reluctance to meet Wardell in private society, the Governor suggested that this should not prevent him attending an official dinner at which the lawyer-editor would be present. The incident engendered pages of correspondence between Saxe Bannister and the Governor. With a pen sharpened by years as a military bureaucrat Darling advised Bannister that 'I can have no desire to place You in so unpleasant a predicament, as that of giving advice on subjects, with which you have no right to interfere.' The incident brought out Darling's belief that the word 'party', when used in its colonial context, referred only to John Macarthur and his group. Where Bannister had written, 'The Press is in the hands of a Party' Darling, in forwarding the letters to London, made the notation, 'It will be seen by any one, who reads the Papers, that there is no connection between them.'⁴

While the Governor was relaxed about the newspapers not everything was running so smoothly for them. In May the rivalry between the *Sydney Gazette* and the *Australian* was disturbed when a third newspaper began publication, competing for advertising revenues and readers. Perhaps as a result of this Robert Howe offered the *Sydney Gazette* for sale in June.⁵

E.S. Hall's new weekly paper was called the *Monitor*. It began by offering the Government praise in terms that could have seemed patronising and supercilious: 'The Government orders please us much. They shew at any rate that

³ Darling to Hay, 24 May 1826, *HRA*, series I, volume XII, pp.326 – 327.

⁴ *Ibid.*, Darling to Bathurst, 24 July 1826, pp.437 – 444:

Francis Forbes also retold the incident to his Colonial Office correspondent: Forbes to Wilmot Horton, 15 December 1826 in Bennett, *Some Papers of Sir Francis Forbes*, p.114.

⁵ *Sydney Gazette*, 14 June 1826.

not only a system is in action, but that the Governor is determined to have it carried into effect by the proper officers.'⁶ The progressive editor pushed hard at his political aims and chastised the emancipists for their sloth in not fighting for their rights.⁷ If the government was approved by the *Monitor*, the general populace was not. The paper urged its readers to campaign for their traditional rights and, in complaining of their laxity, Hall chose a word that was more often used by his rivals to express affirmation and confidence – 'the people of this Colony have lost their English spirit and have degenerated into *Australians*.'⁸

The *Sydney Gazette* had began life as the government journal of record and public information.⁹ The new papers of the 1820s placed an emphasis on political editorialising. When he had published the *Gazette* it was scarcely relevant whether the editor, George Howe, was a Tory or a Whig. In the new competitive market, his son attempted to support both the Government, and moves for trial by jury and representative government. In an effort to maintain Government support and assure his readers of his progressive views, Howe stated his editorial principles. On the one hand: 'It will invariably support the measures of the Administration ...' On the other: 'We shall never cease to plead for the Free Representation of the People, and Trial by Jury, till we are put in possession of those noble and ennobling *RIGHTS*, which are become a constituent principle of our existence.'¹⁰ In tying these two strands together Robert Howe saw no contradictions. In reality his aims pleased no-one. His rivals stressed his subservience to authority, and the members of the Government either took him for granted or found the words he strung together to support them weak and embarrassing. Both sides underestimated the man, and his paper.

Perhaps Robert Howe's attempt to rid himself of the *Sydney Gazette* mirrored a temporary depression. No buyer emerged and he set about dealing

⁶ *Monitor*, 23 June 1826.

⁷ *Ibid.*

⁸ *Monitor*, 21 July 1826.

⁹ Walker, *The Newspaper Press*, pp.3-4.

¹⁰ *Sydney Gazette*, 28 October 1826.

with his competition in the usual colonial way, taunting his rivals as Hall the 'Orator-Editor', and Wardell the 'Barrister-Editor'.¹¹ Howe mocked Hall for using the taboo word convict and, not unlike other critics, suggested they were the *Monitor's* audience:

a term which is no way acceptable to the Colonists generally, and can be dispensed with by the Editor, whilst there's another such a good substitute to be found in Johnson as that of *prisoner*. The other word we know is correct - but then *independent*, or *pretended independent*, Journals should not offend their Readers.¹²

At the *Australian* Wardell supported the Darling government for most of the year, and even used the Sydney administration to criticise Governor Arthur: 'There is one example, which from the little we have as yet seen of it, we may venture most safely to recommend to the Lt. Governor of Van Diemen's Land, for his close adoption ...'¹³ The lawyer editor was also in the fortunate position of being able to praise the Chief Justice.¹⁴ Editorially it looked forward and considered the future relations between New South Wales and England: 'Her loyalty may be transferred: but her affection for the family whence she sprung, will remain unshaken. This is our prediction ...'¹⁵

In July the dinnerist address, and Macarthur's petition, arrived in London. Sir Thomas Brisbane made an appearance in Downing Street and had a heated interview with Earl Bathurst,¹⁶ but did not procure the constitutional reforms his Sydney supporters had anticipated. The disgruntled ex-governor remained angry over the circumstances of his recall yet, after the first outbursts, he gave the men in the Colonial Office the impression that he 'was disposed to be perfectly reasonable upon every point.'¹⁷ The colonists had expected a more dynamic

¹¹ *Sydney Gazette*, 14 June 1826.

¹² *Ibid.* This dictionary is shown in use later in the year.

¹³ *Australian*, 24 June 1826.

¹⁴ *Australian*, 28 June 1826. There had been claims in the *Morning Chronicle* that Forbes was worn out from hearing cases in the crime raddled colony.

¹⁵ *Ibid.*

¹⁶ Eddy, *Britain and the Australian Colonies*, p.103.

¹⁷ MacDonald to Hay, 13 July 1826, CO201/179, p.154.

approach on their behalf, but it would not be until the end of 1826 that they would have news of what had taken place.

In August the subject which had caused so many problems in late 1825, emancipists and juries, arose again in Sydney. Earl Bathurst opposed the sudden introduction into New South Wales of the jury system on the same conditions as it was exercised in Britain.¹⁸ That month the Executive Council discussed his request to consider under what form a modified version of trial by jury could be initiated.¹⁹ Darling placed the matter before the Council but asked them to think it over, and delayed its discussion until the following week. When they met again the councillors decided that as the 1823 Act was soon to expire they would prepare a series of principles to serve as guidelines for the inserting of a suitable clause into the new Act. In these discussions the question was raised whether both emancipists who had received a free pardon (either conditional or absolute), and those whose sentences had expired were eligible under *6 Geo. 4, ch. 50, sect. 3* to act on juries.

The Chief Justice was asked to provide a legal opinion on the situation. His private belief was that 'as a sweeping proposition I do not think it would be advisable to admit convicted persons, altho' pardoned, on juries'.²⁰ In Council he advised that the Act for regulating special juries in England²¹ was only applicable to men who had received a free pardon, and that those free by servitude were ineligible. His legal opinion was wrong for the Act made both categories eligible to serve on juries, but his advice guided the Council. Its members recognized the question as a serious, and divisive, political issue and 'it was deemed inexpedient under any view of the case to raise such a question in New South Wales'. Their attitude in not wanting the matter generally discussed may explain why the case

¹⁸ Bathurst to Darling, 12 December 1825, *HRA*, series I, volume XII, p.84.

¹⁹ Darling to Bathurst, 2 September 1826, *HRA*, series I, volume XII, pp.519 – 522.

²⁰ Forbes to Wilmot Horton, 6 February 1825 in Bennett, *Some Papers of Sir Francis Forbes*, p.55.

²¹ *6 Geo. 4, ch. 50, sect. 3*.

for emancipist involvement was so often not articulated in arguments for constitutional reform.

Forbes realised his advice was wrong, '[s]ome months after', but did not tell the Governor until January 1828. Even then, he only admitted his blunder, in a 'Private Official' letter, when Darling became concerned that the inclusion of free by servitude emancipists on a jury in a Quarter Sessions court case had rendered the trial outcome questionable.²² Forbes's error was a mistake, but his silence was blameworthy.²³

With the matter of the emancipists as jurors out of the way, Council discussions continued about the means of introducing a modified form of the jury system into the colony and juror qualifications.²⁴ In considering the question Forbes claimed to have made a joke for he said with 'levity' that 'the subject was more familiar to the home department than to that of the Colonies.' Seventeen months later he still remembered his cleverness and worried that the levity had been resented by Darling, although perhaps the Governor (like this writer) was only having difficulty in recognizing that humour was intended.²⁵

While the Executive Council and the newspaper editors were interested in the composition of future juries, many of the upper classes were interested in not becoming victims of crime. Crime irritated all levels of society. The disrespects were robbed in the taverns and brothels of the Rocks, a place characterised by Commissioner Bigge (who had never read modern revisionist historians²⁶) as 'chiefly inhabited by the most profligate and depraved part of the population'.²⁷ The goods and persons of the respectable were threatened by burglars outside their houses and their servants inside, and avoiding crime was a

²² Forbes to Darling, 19 January 1828, *HRA*, series I, volume XIII, pp.738 – 739.

²³ For a lack of interest in this matter see Currey, *Sir Francis Forbes*, p.188.

²⁴ The inclusion of all ex-convicts, whether free by servitude or pardon, was embodied in the law passed in New South Wales on 9 October 1829, 'An Act for regulating the constitution of juries for the trial of civil issues in the Supreme Court of New South Wales', *10 Geo. IV No. 8*.

²⁵ Forbes to Wilmot Horton, 7 March 1828 in Bennett, *Some Papers of Sir Francis Forbes*, p.185.

²⁶ Karskens, *Inside the Rocks*.

²⁷ *Report of the Commissioner of Inquiry on the Judicial Establishments of New South Wales, and Van Diemen's Land*, House of Commons, published 21 February 1823, p.70.

serious matter. The locks on elegant Georgian furniture are sturdy. Despite barred windows, bolted doors, and hidden strongboxes, the newspapers carried stories of stolen property making its way from hand to hand into those of the receivers.

In the second half of 1826 many of the upper class people mentioned by name in this narrative were robbed or faced violence. In June Thomas de la Condamine was fortunate. The would-be thief of his Bent Street house was disturbed and escaped through an open window.²⁸ Near-by, in Macquarie Place, the centre of official Sydney, thieves took Francis Forbes's dog. The Chief Justice offered a reward of £5 for the return of his big white animal with spotted ears.²⁹ Dr Wardell's house in George Street was burgled. Amongst the items taken was a blue dress coat with yellow buttons, 'something worse for wear', 'An Indian Silk Handkerchief – blue with white spots' and 'An old Black Coat, the collar of it, well *greased* with the POMATUM OF A WIG!.' He offered a reward of 30 dollars and pleaded for the return of 'at least the useless memoranda.'³⁰ In an odd incident, never completely explained, William Wentworth was almost murdered. Late one night he was making his way from dinner at the Chief Justice's to his 'country-seat' in Petersham. A man with a gun appeared out of the darkness and shot at him. The weapon flashed in the pan, and the man disappeared back into the darkness.³¹ According to the *Australian* Wentworth was riding while the *Monitor* has him 'walking briskly'.³² A minor point but perhaps odd that the papers didn't agree on it. Was a personal matter involved? A woman? A court case? Later in the year both the Colonial Secretary and Government House were robbed.³³

The punishment of crime was used by the administration as a lesson teaching pageant. It was a lever in Darling's system of government. In February

²⁸ *Australian*, 7 June 1826.

²⁹ *Sydney Gazette*, 17 June 1826.

³⁰ *Australian*, 15 July 1826.

³¹ He had recently paid £1500 for Captain Piper's estate at Petersham, which he had previously rented, 'as his country-seat', *Sydney Gazette*, 27 September 1826; *Australian*, 27 September 1826.

³² *Australian*, 27 September 1826.

³³ Occurring about the time of Sudds Thompson these matters are referred to in the following chapters.

the new Governor demonstrated to his subjects that he would not tolerate lawlessness. He hurried on the trial of men, arrested as bushrangers, 'so as to make an early example by their execution, should they be condemned, which I presume there is little doubt of.'³⁴ In July the solemnity of capital punishment was increased by a Government Order that the Protestant bells of St. Phillip's and St. James's churches should be tolled at the time of public executions.³⁵ Ceremonial warnings were not only for the convicts. An Aboriginal held in the Sydney Gaol, suspected of killing a stockman, was several times escorted from the prison and offered powerful lessons - once to a military review³⁶ and then to the hanging of Bridget Fairless and her accomplice James Connolly.³⁷ What he thought of these ceremonies is not recorded.

Forms of punishment interested and divided the newspapers. Their attitudes earlier in 1826 should suggest those they would adopt during the Sudds-Thompson Case. In reality they contrast with what they later wrote. Both the *Sydney Gazette* and *Monitor* discussed whipping. It was the most common form of punishment inflicted by magistrates. 'Flogging', wrote the *Sydney Gazette*, 'is only fit for an unruly and a stubborn beast.'³⁸ Both papers believed that while crime existed its punishment was necessary but debated the forms it should take. The *Sydney Gazette* opposed flogging while doubting that the tread mill, a possible substitute, was really feared.³⁹ The *Monitor* also disliked flogging but qualified this with some exceptions (which would have legitimised Pilate's punishment of Christ), 'All cruelty - all bestiality - all daring insolence and outrageous insubordination - such species of offence are best met by the scourge.'⁴⁰

The humanitarian attitudes of the *Sydney Gazette* and the *Monitor* contrasted with the *Australian*. Wardell's newspaper pleaded the cause of the emancipists,

³⁴ Darling to Bathurst, 6 February 1826, *H.R.A.*, series I, volume XII, p.168.

³⁵ *Monitor*, 21 July 1826.

³⁶ *Australian*, 14 June 1826.

³⁷ *Australian*, 12 July 1826.

³⁸ *Sydney Gazette*, 5 July 1826.

³⁹ *Sydney Gazette*, 19 August 1826.

⁴⁰ *Monitor*, 20 October 1826.

and lashed out at the convicts - who would later become emancipists. Again, that generic word emancipist is too vast to cover all the great variety of men and women who had once been convicts. The emancipists favoured by the *Australian* were the wealthy fragment of that grouping. Towards convicts the paper was harsh. In reporting police court cases, where the criminals were usually of lower rank, the reporter was humorous and mocking about grim events in the lives of real people.

Robert Wardell's *Australian* editorials were intemperate. Endorsing brutality and vigilantism, he exhibited a disregard for legal procedure. Wardell's writing was probably done at night, for he was maintaining a daytime law practice, from which he drew much of his income. The time he had to devote to his newspaper was limited (constrained by his appearances in court and administrative tasks), yet his editorials were long and verbose, excited and self-indulgent, and his judgment was clouded. In the half year before the Sudds and Thompson case the *Australian* made unrestrained appeals, at odds with the principles of the legal system Wardell served, to increase public violence.

In June the *Australian's* harshness was directed at aboriginals, and bushrangers, suggesting the solution to the problems they created was bayonets and ball cartridges.⁴¹ As the *Australian* ranted, the *Sydney Gazette* wrote sympathetically about the black natives and the ravages venereal disease was making amongst them.⁴² This latter matter was widely discussed in the colony. Only the year before Doctor William Bland had seen an original strain of the disease amongst the aboriginal men: 'The tip of their penis swells and grows to the size of two fists; gangrene then sets in, attacking the organs and the man dies. There is no known cure ...'⁴³ The mood of violence the *Australian* was seeking to encourage in its readers was opposed by the Government. A Government Notice set out their principals for dealing with the Aboriginals:

⁴¹ *Australian*, 28 June 1826.

⁴² *Sydney Gazette*, 28 June 1826.

⁴³ Dr Bland to Fabré. Rivière, *The Governor's Noble Guest*, p.50.

In the neighbourhood of Hunter's River, however, some individual natives appear to have committed excesses. But, what community is totally blameless? Individuals may be guilty of acts of treachery, or revenge, without implicating a whole body. No pains will be spared to bring these offenders to justice. But no man of common reflection, who is acquainted with the character of the natives, would consider them as a body, deserving of punishment.

His Excellency the more earnestly recommends, that endeavours may be used to subdue any unfriendly feeling which may exist, in the minds of the natives, by acts of kindness and humanity. By attaching to us, those who have the most influence in the different tribes, the good will of the whole body may be preserved, and the natives generally may be rendered useful auxiliaries against the bushrangers; having on all occasions, cheerfully afforded their assistance, when required to go in pursuit of them.⁴⁴

Wardell's was a singular campaign. The *Monitor* editorialised a belief that the black natives had fallen from the state in which they were created by God, and suggested that if country colonists shared Darling's attitudes then all disputes with the Aboriginals would soon end.⁴⁵

The *Australian* was unconvinced. In August it was still petulant about the aboriginals suggesting that no 'squeamishness about the mode of disposing of the assailants' should be shown when they were 'In open warfare' with the settlers.⁴⁶ Even as aborigines and whites were reportedly in conflict around the Hunter's River the artist Augustus Earle was doing a portrait of the Sydney celebrity Bungaree. As the *Australian* tried to poison feelings the *Monitor* commented on the wounding of two white men - 'we cannot say who were the aggressors. We must say we believe that in two cases out of three the stockmen are to blame.'⁴⁷

In September Wardell's paper encouraged further punitive violence. Two extracts from the *Australian* illustrate the harshness which the lawyer wished to see used in the colony. On 9 September:

⁴⁴ Government Notice, *Australian*, 8 July 1826. This very reasonable Notice employs the word, so often used by Henry Dumaresq, 'cheerful.'

⁴⁵ *Monitor*, 14 and 21 July 1826.

⁴⁶ *Australian*, 5 August 1826.

⁴⁷ *Monitor*, 11 August 1826.

We shall never depart from our opinion, that the system of terror is the only one to be adopted towards them ... Overseers and stockmen may have been to blame – they may occasionally offend the tribes. Treat them as an open enemy, and let them have enough of red-coat-and-bullet fare. For every man they murder, hunt them down and drop ten of them. They will soon find it their interest to be friendly. It will not be necessary then to coax them into amity and good will towards even the stray and lonely and distant settler, or hut keeper. This is our specific – try it. In six months we shall neither hear of murders on the one side nor shootings on the other; and yet all will be peace – peace attained with little bloodshed.⁴⁸

And on 16 September:

if the hangman's rope is not long enough, or strong enough, a bullet will answer the purposes, and a soldier's bayonet will prove a good substitute for Jack ketch ... We don't justify the stockmen ... who may have provoked the tempers of the aborigines, or caused them to act intemperately and murderously; but we shall constantly maintain that the unoffending settler must not be exposed to the consequences of their wrath, or be left in danger of becoming the victims of a ruthless vengeance ... Bayonet law is the most humane law for them; and will produce the most humane effects. For after two or three conflicts the Blacks will retire; the stockmen and others will remain, in future, unmolested, and further loss of life saved.⁴⁹

Not all the paper's readers shared the editorial view. A letter writer, COLO, turned attention towards the colonisers, especially the convicts who came into contact with the aborigines and who some blamed for causing the problems between the two: 'It is much to be lamented that these natives, through the white people they have met with, have learnt all the more disgusting beastly expressions so common in the mouths of the prisoners, and may rather be said to be corrupted, than civilized, by their new acquaintances.'⁵⁰

In September Wardell's angry gaze was drawn to the convicts. Members of a road gang working on the Great North Road complained of their chains. The *Australian* suggested the government adopt heavier chains, and use neck collars.

⁴⁸ *Australian*, 9 September 1826.

⁴⁹ *Australian*, 16 September 1826.

⁵⁰ *Australian*, 7 October 1826.

Iron collars were not an unusual punishment in the colony. They had been used earlier in its history and, as noted, had been put around the necks of women prisoners in Van Diemen's Land only the previous December.⁵¹ The paper's prose was bullying and vindictive: 'There is no harm in making these skilful workman understand the nature and utility of a massy iron chain.'⁵² On the day this appeared two private soldiers, Joseph Sudds and Patrick Thompson, were arrested for stealing 20 yards of cloth. After being taken into custody they may well have read this suggestion in gaol.⁵³

The *Australian's* self-righteousness offered the *Sydney Gazette* an easy target:

But *THESE gentlemen* will not be hugely delighted with good Dr. WARDELL for his interference. Perhaps the learned gentleman, as he is said to be enamoured of many *GOLDEN CHAINS*, thought there was no harm in recommending to the clans of *travelling worthies* a very massy brace of *iron chains, double chains, &c &c*.⁵⁴

Ignoring the comments from its rival the *Australian* continued its appeal for more and heavier chains:

Instead of having a toy-like chain, which they can play with and let them have double irons, and even neck-collars, if required ... We shall not expect to hear much either of bush ranging or escaping, if our expedient be put in practice – a good overseer and heavy chains will accomplish wonders. Hanging is of no use, while ten out of an hundred remain. They are almost all alike, and example is nothing to them; it is lost upon them – but chains, strong chains, will force them all to be honest men.⁵⁵

A few days later the *Australian* encouraged lawlessness by suggesting vigilantism be adopted against the bushrangers, even suggesting that rewards be paid for 'a bag of their heads (leave their bodies behind)'.⁵⁶

⁵¹ *Hobart Town Gazette*, 10 December 1825. Also in Hobart in 1817 a prisoner, Ann Bass, was made to undergo this punishment in public when she had been sentenced to three months gaol and to be placed twice in the stocks for eight hour periods 'with an iron collar placed upon her neck.' *Hobart Town Gazette* 27 September 1817.

⁵² *Australian*, 20 September 1826.

⁵³ *Sydney Gazette*, 11 November 1826. Yet the Sydney Gaol Register states that Sudds and Thompson were committed by Rossi on 19 September: see AONSW 4/6430, reel 85.

⁵⁴ *Sydney Gazette*, 23 September 1826.

⁵⁵ *Australian*, 27 September 1826.

⁵⁶ *Australian*, 30 September 1826.

A more political governor than Darling, or one with more competent legal advisors, may have used the intemperate newspaper prose to impose some curbs on them. Darling had thought about taking action in March, but delayed acting. Now may have been the time to impose controls on the papers, and bring them into line with their British counterparts. Earl Bathurst had read the early issues of the *Australian* and had urged Darling to act through the Legislative Council and pass a law based on British statutes. Bathurst suggested that the names of the printers, publishers, and proprietors should be registered, and published in each edition, and that a 'Recognizance, or Bond to the Crown, with two sureties' be lodged to ensure that any convictions for 'blasphemous or seditious libel' could be met. Warming to his topic Bathurst also proposed an annual licence and a stamp tax.⁵⁷

Wardell's hot-headed writing was a lost opportunity. With all the advantages of hindsight, a case could have been made out and the restraints put in place quickly and coolly. No emotional issues of press freedom were involved, no tiresome matters of personal abuse had to be worked out in courtroom libel cases. The paper was inciting violence, and Government House seemed to be looking on Wardell with great tolerance.

In the gaol Sudds and Thompson awaited trial. Their uninteresting crime had briefly made an appearance in the newspapers, and then they had drifted from view as other events preoccupied the newspaper editors.

⁵⁷ Bathurst to Darling, 12 July 1825, *HRA*, series I, volume XII, pp.16–17.

PART FIVE

The Sudds-Thompson Case in 1826 – 1827¹

2

¹ Although references to government documents in this section are given to the relevant volumes of the *Historical Records of Australia* recourse was also made to the original Colonial Office material, viz. CO 201/174, Despatches, 1826; CO 201/181, Despatches, 1827; CO 204/1, Executive Council Minutes, 1825 – 1826.

Chapter Twelve

Political friendships and miscellaneous events

In small ways, from June through to October 1826, the Government House party interlaced themselves within Sydney society. Eliza Darling set hospitable lights streaming from old Government House, and contacts were made there, and in other dining rooms in the colony's cultural, social and philanthropic circles. Formally the men about the Governor joined and led community associations and contributed to benevolent appeals. Informally the younger men searched for amusing company. These were significant contacts for the Darling government, important for entrenching the new regime.

The horse races in June were aided by the raffish enthusiasm, and organising talents, of Colonel Henry Dumaesq. The contests entertained all ranks, apart from the religious disapprovers, and gave the colonial élites opportunities to race, bet and entertain each other. They also provoked an unexpected literary success. At the race track a rude, anonymous *Calendar of the Sporting Ladies of Sydney*, an indelicate 'Bawdy-house Handbill', passed from hand to hand. It listed the 'girls of the town' with colours, presumed ages, and other details. Sydney laughed and the newspaper editors, whose typesetters were suspected of helping in its publication, denounced the depraved publication.² If in private the editors snorted with amusement, publicly they moralised. During the year, a friendship developed between Henry Dumaesq and Robert Wardell.³ Only after the two men had quarrelled did Francis Forbes refer to their former closeness in his letters to Robert Wilmot Horton – in order to denigrate Dumaesq. On the Private Secretary's side, conjectured Forbes, it was a political alliance to influence Wardell's editorial attitudes: 'One of his earliest objects was

² No copies of the *Calendar* have survived. *Sydney Gazette*, 17 June 1826.

³ Professor Ritchie mistakenly places the friendship after the falling out – 'Henry Dumaesq, who was to fight a duel with Wardell but later befriend him ...': Ritchie, *The Wentworths*, p.209.

the press, and by way, I presume of converting or silencing the *Australian* the Col. formed a close connexion with the editor.⁴ If so, it was an intelligent way of handling possible problems between the oppositionist attitudes of the newspaper and the new government. Sociability would have aided both men. A sympathetic press was an advantage for Dumaresq. For Wardell an alliance with an important and influential member of the administration could help his personal interests, and was insurance that his newspaper continued receiving vital government notices and news. Beyond the Chief Justice's assessment lies a possibility that the two men had a real friendship which was later torn apart. If this was so, it may well explain both the Governor's tolerant attitude towards the *Australian* until the beginning of the Sudds-Thompson Case, and the personal bitterness in its aftermath.

Francis Forbes seemed immune to newspaper mistreatment, being sheltered by his privileged position of power and his liberal politics. In supporting the government the *Sydney Gazette* treated the Chief Justice, as a prominent official, with respect. At the *Australian* Wardell was careful not to upset the man he so often faced behind the bench. And, as a highly placed liberal, Forbes was a useful political ally. The radical *Monitor* shared some of the Chief Justice's political prejudices, and was also careful not to upset the influential judge.

The newspaper flattery that Forbes received was heavily applied and probably insincere. When he was thrown over the head of his horse the *Monitor* used mollicoddling phrases to sooth his bruises and hurt pride: 'We hope his honor will in future ride such horses as will not put his limbs in jeopardy, as we cannot afford to lose his services.'⁵ In this small litigious community the Governor might be assailed with comparative ease, but to arouse the malignity of the Chief Justice on the bench was a more serious matter. The Governor had few personal boons to pass out, and if his influence was used against local enemies this could be

⁴ Forbes to Wilmot Horton, 14 June 1827 in Bennett, *Some Papers of Sir Francis Forbes*, p 169.

⁵ *Monitor*, 14 July 1826.

vigorously contested in the colony and in England. Forbes took the sycophancy he received at face value. He made out the friendship between Henry Dumaresq and Robert Wardell was self-serving and opportunistic, but what was his own relationship with the two lawyers Robert Wardell and William Wentworth? Little is known, but some social contacts were kept up. When the attempt was made on Wentworth's life in 1826 he had been returning from dinner at Forbes's house, and in March 1827, when the *Australian's* editor and the government were bitterly opposed, Wardell was a dinner guest of Forbes.⁶

During the latter part of 1826 small items culled from the newspapers provide threads in forming a partial tapestry of Sydney social life. In August there was news that Admiral Sir James Brisbane, a relation of Governor Brisbane, would be visiting Sydney with his wife. Commanding a naval fleet he was travelling from the base at Trincomalee in Ceylon to take command of the South American Station.⁷ Late that month, on 20 August, E.S. Hall's wife died. For Hall it must have been a period of intense stress as he struggled to care for his family and run his newly established newspaper. At the end of the month a meeting of the Agricultural and Horticultural Society was a typical assembly of the colonial élite. Alexander Macleay was the vice patron and Sir John Jamison its president. The committee brought together Chief Justice Forbes, Rev. Samuel Marsden, John Blaxland, Henry Dumaresq, and Robert Wardell. With little known of private encounters between Dumaresq and Wardell occasions such as this, and meetings of the Turf Club, indicate their public association.⁸

Dumaresq had charm, and vitality, and made friendships easily. He was at ease in various levels of Sydney society, and was also a hard working and conscientious member of the administration. Perhaps an indication of the Darling Government's enthusiastic reform of the bureaucracy and its paper filling

⁶ Enclosure Forbes to Darling, 9 March 1827, *HRA*, series I, volume XIII, p.432.

⁷ *Australian*, 9 August 1826.

⁸ *Australian*, 13 September 1826.

activities is captured by the Commissariat Department's September advertisement for 10,000 quills and 50 reams of foolscap for the Public Service.⁹

While Henry Dumaresq and Robert Wardell were friends, and the *Australian* was accommodating towards the government, the Governor looked towards John Macarthur in Parramatta as the source of possible threats to his authority. In September Darling reviewed the political attitudes of his administration for Robert Hay, and praised himself for having kept his government aloof from Macarthur's faction. To have done otherwise, he conjectured, would have brought disaster: 'had I considerably pinned my faith on this Party and made common cause with them, as seems to have been expected, tumult and disorder would have been the immediate Consequence.' Of his personal relations with John Macarthur the Governor observed, 'our views are different, which is sufficient cause of hostility with those, who know no medium between friendship and enmity.'¹⁰ With the knowledge of the problems created for his predecessors by Macarthur, Darling was to discover that he had been protecting the wrong flank, and one of his most dangerous enemies.

A Wentworth generational change was in progress. D'Arcy was ill and dying, but still interested in moneymaking. On 13 September the Commissariat confirmed a sale he had arranged through Henry Dumaresq, to supply the paper for printing Government notes.¹¹ D'Arcy was also offering his Parramatta house for rent, and the wording of his advertisement should have amused some of its readers - 'None but persons of respectability need apply.'¹² The words Wentworth and respectability made an odd and unnatural connection. William's affairs were also prospering, as he built his own fortune on the opportunities created by D'Arcy. That month he paid John Piper £1500 for the Petersham

⁹ *Monitor*, 1 September 1826. On 22 December 1826 the *Monitor* was critical of the Government's activity and complained of 'the old stock of paper having been used up during the present administration' - *Monitor*, 22 December 1826.

¹⁰ *HRA*, series I, volume XII, Darling to Hay, 2 September 1826, pp.522 - 524.

¹¹ Lithgow to Wentworth, 13 September 1826, D'Arcy Wentworth Correspondence, ML A 754-1, 261.

¹² *Australian*, 30 September 1826.

estate where he lived with Sarah Cox and their daughter – it was to be ‘his country-seat’.¹³

William Wentworth would have been interested in the possibilities for political change which were offered by the Parliamentary debate of a new Act for governing New South Wales. The *Sydney Gazette* pointed this out to its readers, reminding them that the 1823 NSW Act would expire on 1 July 1827.¹⁴ At the same time the *Monitor* experimentally pricked at Darling’s soft spot, which was later exploited with such effect by opponents: ‘We are confident if he does wrong, it is because a military man, bred all his life to the brief discipline of war, finds the flexible, round-a-bout rules of civil policy, beyond his ken and experience.’¹⁵ It was a beginning of Darling’s transformation into a military martinet. A little over twelve months later Henry Dumaesq explained how standardised this criticism of Darling had already become in the hands of his opponents: ‘They unsparingly upbraid him with the Commission of Arbitrary Acts; the effects of a Military education, and with intemperate interference in matters of Justice; the result of passionate ignorance and a hasty temperament.’¹⁶

Until the end of 1826 the comments about Darling were generally supportive. One subordinate government officer, James Harrison, a clerk in the Treasurer’s Office, had experienced the workings of the administration for a little over eight months when he wrote home to his parents evaluating and praising the new regime for its fairness:

The present Governor is much esteemed, and will be of the greatest benefit to the Colony, he is “just”, and fears not – The distinction of Rank Shields no offenders, a man of this kind was much wanted, and with the invaluable Mr Macleay the Colonial Secretary, I doubt not We shall see the Colony advance most rapidly.¹⁷

¹³ *Sydney Gazette*, 27 September 1826.

¹⁴ *Sydney Gazette*, 6 September 1826.

¹⁵ *Monitor*, 8 September 1826.

¹⁶ See Appendix 1, Henry Dumaesq, CO 201/187.

¹⁷ J.F. Harrison correspondence, Sydney letter dated 26 July 1826, CO201/179, pp.52-53.

His father found his son's opinions of interest and, commenting that they came from 'a disinterested a quarter', copied the letter and forwarded it to the Colonial Office.¹⁸ Francis Forbes was also praising the administration, as a capable machine, intelligently directed. Unlike the young clerk he was able to make comparisons with the previous Brisbane government. He also offered forceful words in favour of the free press:

the affairs of this Colony have changed – they are so much changed that we are hardly the same body politic. The appointment first of a Supreme Court – then of a Legislative Council, and afterwards an Executive Council – the spreading of the government over a larger area, the frequent points of contact with the best informed of the inhabitants – and above all the fairness and openness with which the affairs of the Colony are now conducted, have made something like a peaceful revolution in the place. I must add too, the liberty of discussing the acts of government and public men in the journals of the Colony, has given the people an interest and knowledge, and impetus, which it would have been hardy to foretell in “the Colony” for the next generation.¹⁹

Forbes's praise of the newspaper had political implications, and was intended to form opinions in the Colonial Office. Attorney General, Saxe Bannister, was complaining of the *Australian* and Forbes would have been aware that his letters of criticism would also be heading towards London.

Darling had protected Wardell's newspaper when Bannister argued that an action for libel should be initiated against it by the government. Explaining his decision not to do so Darling showed himself tolerant, and unwilling to accept that the journal was overstepping any boundaries of acceptable behaviour: ‘The “irreligious tendency” of the Paper can only apply to the insertion of the Police Cases. In a moral point of view, it may be injurious; but why is it to be expected that the Papers here should be more particular than elsewhere?’²⁰ The Governor attributed Bannister's desire for legal action by imputing that he had been friends

¹⁸ *Ibid.*

¹⁹ Forbes to Wilmot Horton, 6 September 1826 in Bennett, *Some Papers of Sir Francis Forbes*, p. 104. On the matter of writing to Hay see also Forbes to Wilmot Horton, 6 February 1827, p. 121.

²⁰ Remarks on Mr Bannister's Letter, 4 September 1826, *HRA*, series I, volume XII, , p. 532.

with both Robert Wardell and William Wentworth and fallen out with them. When the paper had written in opposition to Brisbane's government, Bannister had not recommended prosecution - but now, when the paper was supporting the Government but writing against Bannister and the Macarthurs, he recommended legal action:

It is clear that the Attorney General, naturally irascible, is actuated by personal feelings against the Editor of the *Australian*, and not by any sense of public duty; and that he is urged to persevere by his friends, who are irritated by the strictures of that Paper.²¹

In mid-September the *Australian* broke from its support of the government criticising new regulations for the granting and sale of land.²² Its opposition was unusual enough for Darling to comment on, and excuse, in a despatch to Under Secretary Hay. Darling both played down the censure - 'there is nothing in the Article of importance', and defended Wardell's behaviour - 'It is supposed that the Editor of the "*Australian*", who has been taunted as having changed his Politics, and become the supporter of the Government, has published the Comments alluded to in order to prove that the reports of his Apostasy are without foundation.'²³

At the end of the month Henry Dumaresq used an anonymous letter to the *Sydney Gazette* to criticise Wardell. Hiding behind the signature 'Z' Dumaresq disapproved of the levity in which an attack by bushrangers on the home of the settler Dalhunny had been reported in the *Australian*. While critical of his friend, Dumaresq softened his words with unsubtle flattery: 'distinguished as he is amongst us, as a man of talent and probity. I would call upon him to consider what may be the consequences of his writings ...'²⁴ Dumaresq informed his brother Edward that he had written the letter, and others in the newspaper office

²¹ *Ibid.*

²² *Australian*, 13 September 1826.

²³ Darling to Hay, 14 September 1826, *HRA*, series I, volume XII, p.582.

²⁴ *Sydney Gazette*, 30 September 1826.

and Government House were surely aware of his authorship.²⁵ If the letter was a quasi-official act by the Governor's Private Secretary it was a naïve attempt on the part of the administration to influence newspaper comment. An anonymous letter was not a valid substitute for government controls over the Sydney press.

Dumaresq was quibbling about a press report perhaps without realising the real force available to an editor if he decided to move his press into serious opposition. The newspapers would hardly be dealt with by such puny means, and if Government House saw this as a fit way of treating newspaper reporting they opposed they were revealing themselves as ineffectual. If Wardell knew Z's identity he may have been affronted by the criticism, by the use of the rival paper against him, and the underhand use of anonymity to oppose him.

About this time the familiar question of the status of the emancipists resurfaced. To defend himself from criticisms made by Governor Macquarie and the 1824 edition of Wentworth's book, Samuel Marsden wrote a self-defensive pamphlet and had it published in London. When copies of *An Answer to certain calumnies in the late Governor Macquarie's pamphlet, and the third edition of Mr. Wentworth's Account of Australasia*²⁶ arrived in Sydney the newspapers were quick to point to the comments he made about the emancipists. The *Sydney Gazette* asked - 'Pray does Mr. MARSDEN believe in the notion of *once* a prisoner - *always* a prisoner?'²⁷ The *Monitor* bought into the discussion by claiming to see in the election to the committee of certain public institutions a coming together of the disparate social groups in the colony: 'we consider the two parties of Emigrants and Emancipists, or the Exclusionists and Colonists, to be at length united.' However there was still 'the Faction' to torment society and prevent a proper forgetting of the original sins which had brought many a now respectable settler

²⁵ Henry Dumaresq to Edward Dumaresq, 14 October 1826, AOT NS 953/315.

²⁶ Samuel Marsden, *An Answer to certain calumnies in the late Governor Macquarie's pamphlet, and the third edition of Mr. Wentworth's Account of Australasia* (London, 1826).

See also Lachlan Macquarie, *A Letter to the Right Honourable Viscount Sidmouth, in Refutation of Statements made by the Hon. Henry Grey Bennet, M.P. in a pamphlet "On the Transportation Laws, the State of the Hulks, and of the Colonies in New South Wales"* (London, 1821).

²⁷ *Sydney Gazette*, 7 October 1826.

to the colony: 'This party will *never* consent to give up their oligarchal claims, and mingle with the community.'²⁸ As the wrangling continued, Mrs Darling gave birth at Government House, attended by Dr. Bland the emancipist.²⁹

Eliza had been predicting she would produce a daughter, and there was some surprise when Bland delivered a son, 'a magnificent animal' according to Henry Dumaresq.³⁰ The birth, using an emancipist surgeon, suggested a more nuanced attitude towards practical dealings with emancipists than was allowed by the polarising rhetoric of the newspapers. It also produced a colourful example of the spoken language used at Government House, especially amongst the men. Henry questioned the nurse as to the child's sex, and provoked her into saying that she was 'cocksure' the child was a boy.³¹

The relaxed language found in Henry Dumaresq's letters may reflect his spoken language, and that within Government House. If so it offers an antidote to the language of the despatch writers, and to interpretations of Governor Darling as formalistic, icy and cold. The daily language of Darling's office may have been closer to that of the military barracks with which most of its male members were familiar. Another example of Dumaresq's language is in a further letter to Edward in which he wrote of Sir John Jamieson who was his brothers rival in his, ultimately unsuccessful, courtship of Jane Blaxland. Historian Brian Fletcher suggests that the letter 'contains one of the most sustained pieces of invective ever written by one colonist about another':³²

he may as well try to extract f[ar]ts from a dead ass, and strive to gain a livelihood by selling them by the Bushell, to make chalk of cheese, and Honey of a Dogs t[ur]d]d – I merely quote you know – To milk he Goats by the Dugs, and save their milk in a sieve – as to accomplish his purpose with the fair Jane.³³

²⁸ *Monitor*, 20 October 1826.

²⁹ *Sydney Gazette*, 7 October 1826.

³⁰ Henry Dumaresq to Edward Dumaresq, 11 October 1826. AOT NS 953/315

³¹ *Ibid.*, Henry Dumaresq to Edward Dumaresq, 14 October 1826.

³² Fletcher, *Ralph Darling*, p.419.

³³ Henry Dumaresq to Edward Dumaresq, 14 October 1826, AOT NS 953/315.

In October at least three matters disturbed the general good will which existed between Francis Forbes, Robert Wardell and Ralph Darling. Firstly, on 6 October, Francis Forbes was granted four square miles of land.³⁴ It was not enough, for it did not include an area he particularly wanted, which was given to Robert Wardell.³⁵ When the editor turned against the Government Forbes remembered his lost acres and wrote that Wardell's disloyalty occurred after he had 'reaped some valuable advantages – inter alia a choice section of the beautiful valley called after the late Princess Charlotte at Bathurst, which I have ever coveted.'³⁶ If Forbes's placed Wardell's change of political direction after gaining some advantage from Darling he did not suggest that his own apostasy occurred after this disappointment.

Secondly, on 10 October, the Chief Justice offended the Governor. Forbes sent the first draft of his proposals for the upcoming New South Wales Bill, due for parliamentary debate in 1828, to Robert Wilmot Horton without discussing them with the Darling.³⁷ Forbes's behaviour was ambivalent and Darling, who claimed that he and the Chief Justice 'were on the most friendly terms', was offended:

Altho' I felt the insult, which was offered to my Situation by his forwarding a Bill to England for the administration of Justice in this Colony, of which I was the Governor, without communicating it to me, I bore it in silence rather than risk a disunion amongst the Members of the Government.³⁸

In a later account of what took place, written when both men were enemies, Darling made the Judge's behaviour seem odd, if not deceitful:

Mr. Forbes came at night to my Secretary's Office when the Letter Bag was being closed, and, without seeing me, put *the original Draft of the Bill himself into the Bag*, which was sent off at day Break the next morning. I was not even aware of the circumstances, being

³⁴ 2,560 acres, Darling to Bathurst, 3 January 1827, Return of Land Grants 1826, *HRA*, series I, volume XIII, p.6.

³⁵ *Ibid.*

³⁶ Forbes to Wilmot Horton, 14 June 1827 in Bennett, *Some Papers of Sir Francis Forbes*, p 169.

³⁷ Francis Forbes to R. Wilmot Horton, 10 October 1826, ML A1819.

³⁸ Darling to Huskisson, 28 February 1828, *HRA*, series I, volume XIII, p.824.

exceedingly occupied at the moment, until my Secretary [Henry Dumaresq] informed me the following day.³⁹

The political importance of the new Act was well understood in Sydney. The *Sydney Gazette* told its readers of its plan to have a special agent in London to obtain 'the earliest and most authentic intelligence from England, upon a scale unequalled in the recorded exertions of the Colonial Press.'⁴⁰

Thirdly, Robert Wardell had several reasons to be less content with the Government. He failed to be appointed Acting Attorney General. Saxe Bannister had resigned and Darling had to make a temporary appointment until the permanent position was filled from England. Darling appointed W.H. Moore, the Government Solicitor.⁴¹ Robert Wardell was a qualified candidate but an impossible choice for at the time the selection was being made he was publishing articles calling for heavier convict chains and vigilante action against bushrangers and aboriginals. The violent words made his claims for an official law position untenable. Responding to his bloody fantasies the *Sydney Gazette* called him 'a hair-brained hairum scairum sort of fellow', and suggested he could be prosecuted as an accessory if anyone were to take his murderous advice.⁴²

Granting Wardell land in Bathurst may have been to compensate him for his disappointment in not being appointed to temporarily replace Bannister – even at the expense of annoying Francis Forbes who so keenly desired the same acres. The *Australian* had been supporting the Government and, as Darling observed, Wardell was being taunted for changing sides. With the land in his possession, and realising an official position was out of his reach, Wardell may have been more inclined to heed the criticisms of his liberal friends and prepared to re-evaluate his support for Governor Darling if a crisis occurred.

As Wardell fulminated against bushrangers the children of the recently arrived Royal Veteran Companies were playing bushrangers and soldiers in the

³⁹ *Ibid.*

⁴⁰ *Sydney Gazette*, 11 October 1826.

⁴¹ Darling to Bathurst, 27 October 1826, *HRA*, series I, volume XII, p.666.

⁴² *Sydney Gazette*, 7 October 1826.

streets.⁴³ Their fathers had arrived in September, and were commanded by Captain Robert Robison. The children had quickly acclimatised and incorporated the bushrangers into their play. The possibilities of using convicted bushrangers as the raw material for a new ceremony also occurred to the government. Before an official announcement was made, the *Monitor* revealed the administration's thinking: 'In order to increase the effect and produce a more powerful example by the execution of criminals, it is in contemplation, to make the actual scene of their respective crimes in future the place of punishment.'⁴⁴ Several weeks later a Government Order confirmed the newspaper's speculation. A group of captured bushrangers had been convicted, and it was planned to execute them close to where their crimes had been committed. To make sure the message was appreciated by the convicts the prisoners of nearby road gangs were to be present at the executions and the bodies were to be left hanging during the day.⁴⁵

Before the sentences were carried out Henry Dumaesq visited the condemned men in Gaol. Governor Brisbane dining with his ex-convicts is one brilliantly coloured recollection of Australian colonial society, the visits by Governor Darling's Private Secretary to these men is another. In a letter to Edward, the only record of the meetings, Dumaesq wrote of the men without cant or pomposity and with some candour. Although they no doubt deserved hanging and he probably agreed with the *Sydney Gazette's* comment that 'To spare these men would, indeed, be a waste of mercy',⁴⁶ Dumaesq's response to the men was humane. He saw their faults, and qualities, and called one of them, Mustin, 'a Hero in his way – and a fine fellow'. The word 'Hero' was applied neither lightly, nor cynically. Dumaesq's usage was clear and meaningful.

The bushrangers' deaths were to be ceremonial and ritualistic and Dumaesq wanted Mustin to act his part suitably. As one of those who had

⁴³ *Sydney Gazette*, 11 October 1826.

⁴⁴ *Monitor*, 6 October 1826.

⁴⁵ *Monitor*, 20 October 1826.

⁴⁶ *Sydney Gazette*, 14 October 1826.

probably planned the ritual Dumaresq knew how the younger man could best perform. Mustin stirred Dumaresq's pen, and his imagination. With a masculine and soldierly disdain of an effete clergy (and rock solid Christian beliefs) Dumaresq really did know what 50,000 armed men looked like, and how they could be thrown across the landscape. New South Wales was an unlikely scene for his Napoleonic castle building and his dreams of deploying a European army and was based on action in other climates:

You will observe that we have been hanging – or rather that we shall be doing so on Monday next – and are endeavouring to add to the effect of the Executions by changing the places - & that in one case (that of the Dalhuntys) – the Criminals are to be suspended on the site of their iniquity – I have seen a good deal of Mustin – Who is a Hero in his way – and a fine fellow – I purpose paying him another visit tomorrow, as I think I have induced a better tone of mind by my conversations with him, and that his is a spirit, I know better how to deal with, than all the Gentlemen in Cassocks – I should like to have 50,000 such fellows on particular occasions – and we would dethrone the Devil if we liked to attempt it.⁴⁷

The ceremony had been thought out in detail, and was carried out with precision. On a Monday morning the prisoners left their cells at six o'clock, wearing white caps, decorated with black ribbons, and with halters around their necks. Loaded into two carts, Mustin, Watkins and Brown, who were to die at Burwood, went into the first with their executioner. Two other men, Cavenagh and Craven, who were to die at Parramatta, went into the second with the executioner's assistant. A third cart followed carrying their coffins. Armed soldiers surrounded the Sydney tumbrels and in the early morning a solemn and impressive procession formed outside the gaol - soldiers, armed police, javelin men, the Chief Constable of Sydney, the Assistant Superintendent of Police, the Under Sheriff, the officer commanding the military and the Catholic priest Rev J.J. Therry. Dumaresq had not been the only visitor to the men's cell and the *Monitor*, with a protestant moan, claimed that although only one of the men was

⁴⁷ Henry Dumaresq to Edward Dumaresq, 14 October 1826, AOT NS 953/315.

Catholic, Therry's preaching the consoling doctrine of 'salvation by grace alone' had converted the others. The line of men on horseback and carts left Sydney along George Street for the scaffolds at Burwood.

Around the temporary gallows the prisoner work gangs assembled to witness the traditional ceremony of halters, rope, noose and drop. Mustin showed that 'better tone of mind' Henry Dumaresq had sought for he spoke to the onlookers 'warning them to take example by his end, and to attribute whatever of boldness they might have observed in his demeanour, to an anxiety to meet his fate, not to any unconcern about it.' His two companions were silent. Brown went to his death alone. Mustin and Watkins stood on the scaffold hand in hand and, about 10 o'clock, they 'were turned off in that manner.' The bodies were left hanging until four in the afternoon. Mustin was taken to Longbottom where a potter, Mr Leak, and the surgeon with the Buffs, Dr Ivory, took a cast of his head. Cavenagh and Craven, were executed at Parramatta, and later James Moran and Patrick Sullivan, with two more Bathurst bushrangers, were hanged at Irish Town.⁴⁸

It had been a successful ceremony, devised to teach a serious lesson. Henry Dumaresq had been involved in its planning – and even coached one of the star players, Mustin, in his role. In this drama, so carefully thought out, all the actors, including the condemned men, had played their parts. Mustin performed admirably, his words from the scaffold were finely attuned to the intent of the ceremony's organisers. The ritual was dramatic, it was moving, and it was moral. All that was lacking was music.

Capital punishment offered opportunities for teaching lessons of law and order but minor breaches were punished in the usual ways. Robert Wardell, like other settlers, used the courts to discipline his convict servants. It was not something he drew attention to in his newspaper. In October when two of his

⁴⁸ *Sydney Gazette*, 18 October 1826.
Monitor, 20 October 1826.

men were brought before the bench charged with insolence and drunkenness the event was ignored in his own columns. However, the *Sydney Gazette* was pleased to draw attention to the case, 'Notwithstanding the Doctor's wish to be lenient, the latter was sentenced to three days to the tread mill, while the former, on account of his superior good conduct, was dismissed.'⁴⁹ Wardell was cautious about seeing his own private affairs discussed in public, though less concerned with those of his fellows.

While men were being punished and hung, the port of Sydney was busy with new colonists and arriving visitors. The naval ship *Volage* docked, and at about the same time Mr and Mrs Bucknell, she a niece of D'Arcy Wentworth, arrived in the colony.⁵⁰ The *Volage* had sailed from Ceylon, and was the first vessel in Commodore Brisbane's fleet to arrive in port.⁵¹

About noon on 19 October 1826 the other naval vessels arrived. It was a dramatic moment for Sydney shuddered as a noisy salute was exchanged between the land guns and the arriving *Warspite*. Spectators around the Cove saw the largest vessel ever to have visited Sydney. After the battery had fired, and with her band playing, the 'massy floating pile ... fired the usual salute from her numberless port-holes, which made no trifling impression on the ear.'⁵² The colonists had reason to be impressed. His Majesty's Ship *Warspite* was crewed by 500 men and armed with 74 guns. She was the first 74 to visit Australia and the largest manmade object ever seen in Sydney. Seizing the opportunity Augustus Earle ran off a souvenir of the event by retouching a lithograph of Sydney Harbour placing the *Warspite* in the foreground so that her great size towered over the town and other ships in port.⁵³ The firing guns were heard in the Sydney Gaol where Joseph Sudds and Patrick Thompson were imprisoned. The Sudds-

⁴⁹ *Sydney Gazette*, 28 October 1826.

⁵⁰ *Sydney Gazette*, 18 October 1826.

⁵¹ *Australian*, 18 October 1826.

⁵² *Sydney Gazette*, 21 October 1826.

⁵³ *Sydney Gazette*, 21 and 25 October 1826. A copy entitled 'H.M. Ship Warspite, 74 guns, 1826' is held in the Lithographic Collection of the National Library of Australia.

Thompson Case may never have taken place if the fleet had not arrived just at this time.

The *Warspite's* commander, Admiral Sir James Brisbane, was travelling with his wife, Lady Brisbane, their two daughters and his young son, serving as a lieutenant.⁵⁴ With the *Warspite's* arrival from Trincomalee there were now three men-of-war in port – *Fly*, *Volage* and *Warspite*. Henry Dumaesq was the first official visitor to the ship after it anchored.⁵⁵ The admiral he met was a dying man. The *Sydney Gazette* told its reader that Sir James Brisbane 'has suffered, it is said, most severely from an indisposition peculiar to the destructive climate of India' and predicted that if he were to only stay a few weeks 'he will be certain to leave us with renovated health.'⁵⁶ With his son and the ship's captain Brisbane landed at the government steps on Friday and lunched at Government House. In the afternoon Governor Darling returned with the party to inspect the *Warspite*. Brisbane, 'a fine elderly looking man'⁵⁷, soon moved ashore to be more comfortably lodged. Government House was too cramped to accommodate him and his family and Darling rented the merchant emancipist Simeon Lord's house in Macquarie Place.⁵⁸ Unknown to contemporaries, the dying admiral had probably, and inadvertently, brought death and division into the colony.

⁵⁴ *Australian*, 21 October 1826.

⁵⁵ *Sydney Gazette*, 21 October 1826.

⁵⁶ *Ibid.*

⁵⁷ *Monitor*, 27 October 1826.

⁵⁸ Governor Darling requested that the £100 rent be paid by Treasury. If declined Darling asked that the matter 'not be made known to Lady Brisbane'. Darling to Hay 26 February 1827, *HRA*, series I, volume XIII, p.129.

Chapter Thirteen

A Parade Ground ceremony

Friendly personal contacts, or politically inspired friendships, between the Government House party and possible opponents helped relax political tensions throughout most of 1826. Late that year Sydney liberals were teased by the possibilities for change offered by, what came to be known as, the 1828 New South Wales Act. When Joseph Sudds died after undergoing a ceremonial punishment, stage-managed by Governor Darling, it seemed the exploitation of the incident by leading liberals was to demonstrate the injustices of the system Darling symbolised, and his personal authoritarianism. As Robert Wardell demolished the comfortable façade of toleration and support which Governor Darling had come to rely, questions are raised whether the Sudds-Thompson Case arose from humanitarian sympathy, or was seen as offering an irresistible political opportunity, or if more personal reasons were involved?

In the spring of 1826 the weather was unpredictable. The last Friday in October had been hot and sultry, with a boisterous wind blowing through the town making life 'almost insupportable'. A snap change occurred and the following day was extremely cold.¹ During the first week of November an inquest was held upon the recently discovered body of Frederick Fisher – in the 1830s it was claimed that his ghost had pointed to where his murdered body was to be found.² A similar revisionism worked over the Sudds-Thompson Case where later 'facts' coloured the record. The ghost led Fisher into folklore, Sudds Thompson led Darling into villaindom.

On the *Warspite* a young midshipman died of tuberculosis and was brought onshore for burial. A newspaper announcement stated that the ship 'requires a

¹ *Australian*, 1 November 1826.

² 'Fisher's Ghost: A Legend of Campbelltown' in *Tegg's Monthly Magazine*, March 1836, pp.4 – 8.

reinforcement of able hands to proceed on a short voyage to the Pacific.'³ Whether there had been deaths amongst the crew during the voyage from Trincomalee, or whether there was need to replace desertions or deaths in Ceylon is uncertain. Accompanied by the *Volage* and *Fly*, the *Warspite* left Trincomalee on 26 August and arrived in Sydney on 19 October. A virus may have accompanied the sailors from Ceylon, for by 4 November an epidemic was sweeping through Sydney. The *Australian* blamed the 'extraordinary weather' and noted that already 'Half the town of Sydney is on the sick list'.⁴ The *Sydney Gazette* gave the malady a name, 'catarrh is at present very prevalent', and recalled the dramatic effects of another epidemic on Sydney aboriginals in 1819. The first death was reported when a Mrs Rose, who was affected and seemed recovered, relapsed and died.⁵

Henry Dumaesq left Sydney at the beginning of November. Recently appointed to act as clerk of the Legislative Council, he was making an overland trip to the Hunter's River and was expected to be gone about four weeks.⁶ On Sunday, 5 November, the Sabbath was broken by the guns of the British warships firing in memory of the 'Popish gunpowder plot.' On Monday Guy Fawkes was 'escorted through the streets of the metropolis in due form' and in the evening was 'burnt to ashes!'⁷ Despite the changeable weather, which had again turned cold, and the catarrh or influenza epidemic, colonists looked forward to a public concert advertised for 4 December under the patronage of the Governor and Mrs Darling.⁸

Having been in gaol since 20 September, Patrick Thompson and Joseph Sudds appeared in court on 8 November. It was claimed that on the evening of the robbery, between 8 and 9 o'clock, they had stolen 12 yards of calico from a

³ *Monitor*, 3 November 1826.

⁴ *Australian*, 4 November 1826.

⁵ *Sydney Gazette*, 4 November 1826.

⁶ *Sydney Gazette*, 4 November 1826, 8 November 1826.

⁷ *Sydney Gazette*, 8 November 1826.

⁸ *Sydney Gazette*, 8 November 1826; *Monitor*, 10 November 1826.

Sydney shopkeeper, Michael Napthali, and that the theft was performed to get the two privates out of the army: 'Upon the prisoners being searched, they declared it had been their fixed determination to commit some species of theft by which they would be transported, in order to get rid of the regiment.' The case appeared clearly proven and each man was found guilty and condemned to seven years transportation. The verdict may have been irregular. Both men had come free to the colony and were first offenders, their situation was covered by a Legislative Council Act passed in August. It provided that in such cases miscreants could be sentenced to hard labour in prison, or be worked or assigned by the government, but not transported:

Section 5: Provided that all persons born in the said Colony or who have come into the same free shall for their first offence being of the degree as aforesaid be liable to imprisonment and hard labor within prison walls only or be kept in the ordinary employment of the Crown or of the assignee or assignees of the Governor or Acting Governor and to be subject to the summary jurisdiction of Justices of the Peace in like manner as if such persons as last aforesaid had been transported from England.⁹

The two soldiers made a bad impression on the newspaper reporters. When the judgments were made Thompson turned to the bench and said, 'I hope your Honor will let my fire-lock go with me to the penal settlement you talk of, as it would be serviceable to me in the bush.' Patrick Sudds was reported smiling as he left the bar. In both the *Sydney Gazette* and the *Australian* the men's behaviour was represented unfavourably. The former commented that 'The prisoners appeared to be most daring characters'.¹⁰ Some days later, 11 November, in the midst of the epidemic, Sudds, who had been ill earlier in the month and treated as an outpatient, was admitted to the Gaol Hospital.¹¹

The soldiers' trial was a minor military matter, annoying to those concerned with enforcing army discipline. The theft and the convictions were

⁹ *Act No. V, 7 Geo. IV* in *HRA*, series I, volume XII, p.839.

¹⁰ *Australian*, 11 November 1826; *Sydney Gazette*, 11 November 1826.

¹¹ Minute 22 of the Executive Council, 8 December 1826, *HRA*, series I, volume XII, p.744 - 745.

trivial cases in the police reports, and no-one appeared to have suspected that the court had made an error in passing sentence. Editorially the *Australian* was busy with a weightier matter, the future of the colony, and was spurring on the apathetic settlers:

We are just on the verge of the year 1827 – a year in the course of which, the New South Wales Act of Parliament will expire – and yet there has been no public manifestation of that desire which universally exists throughout the Colony, to claim from the British Legislature an extension of the institutions of England to this portion of her imperial dominions.

The *Australian* found fault with the population for not sharing the editor's political enthusiasm: 'The people of New South Wales have only one thing to fear, and that is themselves – their own inertness.'¹²

Several government officers appeared in the newspapers during November. Alexander Macleay was added to the list of senior figures who had been victims of crime. His house was robbed, a quantity of plate was taken, and suspicion fell on the convicts working there.¹³ About the same time it was revealed that over the previous year the Colonial Secretary had received about 8,000 letters, which was taken to show an increase in public business.¹⁴ The Governor's other Dumaresq brother-in-law was also noticed. The *Australian* complimented Captain William on his road making, then complained that the road from Liverpool to Windsor had not been attended to. The *Sydney Gazette* suggested its rival search for Aladdin's lamp to correct the problem: 'The Doctor has never been good-humoured since his Ex-Chancellor's wig, and his old black coat, were stolen.'¹⁵

¹² *Australian*, 11 November 1826.

¹³ *Australian*, 15 November 1826; *Sydney Gazette*, 15 November 1826.

¹⁴ *Sydney Gazette*, 11 November 1826.

The figures for the Darling period of letters received by the Colonial Secretary: 1826 - 8,849; 1827 - 12,005; 1828 - 10,430; 1829 - 10,334; 1830 - 9,845; 1831 - 10,682; from Arthur McMartin, *Public Servants and Patronage: The Foundation and Rise of the New South Wales Public Service, 1786 - 1859* (Sydney, 1983), p.161.

¹⁵ *Sydney Gazette*, 11 November 1826.

On 17 November Robert Wardell's land grant of 560 acres in the Bathurst area was made official. Wardell had a stated capital of £2000 yet he received a smaller parcel of land than other men who, with less capital, were granted larger acreages.¹⁶ This may have been a cause of grievance with the administration. Why, also, was the land not given to the Chief Justice who had requested it? One man may have been angered by what he had received, and another by what he had not.

The illnesses in the colony had become serious and each newspaper devoted space to discussing the epidemic and counting the deaths in Sydney. Over three days, Saturday to Monday 11 to 13 November, there were 46 fatalities - 17 on Saturday, 20 on Sunday and 9 on Monday. There was uncertainty as to what was infecting the colony, but its effects were undoubted: 'The catarrh, or influenza, as some will have it, has made considerable ravages in our population. Many deaths have occurred, and scarcely a family exempted from its irritating results.'¹⁷ Government House wasn't untouched, and William Dumaresq wrote that 'an influenza seems to have run through the Colony & the Children have had a slight attack but are quite right again.'¹⁸ Joseph Sudds was discharged from the gaol hospital on 16 November.¹⁹

Perhaps goaded by the newspaper reporting of their trial, the Governor decided to alter the sentences passed on Sudds and Thompson. He would subject them to military disgrace, and change their punishment from transportation to hard labour on the roads. In deciding these changes Darling was without the advice of his Private Secretary, and did not seek legal advice from the Acting Attorney General or the Chief Justice. To alter the men's sentence he acted upon his own interpretation of Section 6 of the Act already cited, *Act No. V, Geo. IV*, passed by the Legislative Council on 16 August:

¹⁶ Darling to Bathurst, 3 January 1827, Return of Land Grants 1826, *HRA*, series I, volume XIII, p.7.

¹⁷ *Monitor*, 10 November 1826; *Sydney Gazette*, 15 November 1826; *Australian*, 15 November 1826.

¹⁸ William Dumaresq to Edward Dumaresq, 17 November 1826, AOT NS 953/321

¹⁹ Minute 22 of the Executive Council, 8 December 1826, *HRA*, series I, volume XII, p.744 - 745.

Section 6: And be it further enacted That it shall be lawful for the said Governor or Acting Governor by an Order in writing registered in the Office of the Secretary of the said Colony to withdraw any person or persons now or hereafter to be transported or sent to any Penal Settlement or place as aforesaid and to employ him her or them either in irons on the public roads or works or in the ordinary service of the Crown or to assign him her or them to settlers or others to be dealt with in all respects as if he she or they were under sentence of transportation from England.²⁰

In preparation for the public ceremony special chains were made for William Dumaresq by the blacksmith, Benjamin Constable, in the government lumber yard. Calculated to weigh fifteen ponds that weight diminished as several pieces of iron were removed.²¹ Darling may even have anticipated the approval of the *Australian* which had been calling for heavier chains and neck collars in September.²²

As the government's first anniversary approached the *Sydney Gazette* congratulated the Governor - 'the number of abuses, which has been rectified during that short period, seems to be almost incredible.'²³ Recently the gaol population had been increased by the admission of Laurence Halloran for debt, and his daughter Mrs Shortt for larceny.²⁴ The *Sydney Gazette*, which had broken with him almost twelve months before, printed an appeal for his aid.²⁵ With Halloran in the gaol a known newspaper writer and polemicist had moved into the very place from which later eyewitness reports would originate. Planning for the amateur concert, to be held in the Castlereagh Street Court House, was proceeding and tickets in aid of Benevolent Society were on sale at 10/- each.²⁶

²⁰ The full text of Sections 4, 5 and 6 are given in Appendix Six: *Act No. V, 7 Geo. IV* in *HRA*, series I, volume XII, p.839. The text will also be found in *Copies of the Laws and Ordinances passed by the Governor and Council of the Colony of New South Wales: 1826*, 16 May 1828.

²¹ Darling's affidavit in the *Report from the Select Committee on the Conduct of General Darling while Governor of New South Wales, with the Minutes of Evidence and Appendix* (1835), p.161.

²² *Australian*, 20 September 1826.

²³ *Sydney Gazette*, 15 November 1826.

²⁴ Darling to Bathurst, 3 February 1827, *HRA*, series I, volume XIII, pp.67 – 68.

²⁵ *Sydney Gazette*, 15 November 1826.

²⁶ *Australian*, 18 November 1826.

Sydney's epidemic was more serious than the common cold and its effects also touched the local population of aboriginals with some dying from it: 'It is rather an awkward thing to fall under its gripe; for many are gone to-day, who were here yesterday; and many who are here to-day may disappear to-morrow, without exciting the astonishment of the medical attendants.'²⁷ On 15 November there was an eclipse of the moon, and on the following day the heat at Parramatta was extreme with the temperature in the shade 103°F and in sun 134°F.²⁸ Governor Darling spent several days in Parramatta. To help bring in the harvest he directed the Chief Engineer that all prisoners who could use a sickle, and could be spared from the gangs and public works, were to be made available to the settlers. The *Sydney Gazette* was thinking ahead and expressed the wish that Lady Brisbane and her daughters, who had come ashore to care for the dying admiral, would pass Christmas in Sydney 'with us loyal folks.'²⁹

On Sunday, 19 November, Patrick Thompson was missing his own possessions and petitioned the Governor for 'the restoration of his necessities.' He complained that he had written to Lieutenant-Colonel Shadforth, his commanding officer, and also the Captain of his Company for his property, 'and also a settlement', but received no reply. The letter was handled by the Colonial Secretary's office and a notation was made - 'no answer.'³⁰ Soon to be publicly degraded Sudds and Thompson may not have known that Darling had decided to change the court's sentence and that they had not escaped the army, for he intended they should labour on the roads in irons, and then be returned to the Regiment. The petition was trivial and made no mention of their anticipated fate. The two men may still have believed they were to be transported to a penal colony.

²⁷ *Ibid.*

²⁸ *Sydney Gazette*, 18 November 1826.

²⁹ *Ibid.*

³⁰ Letter from Patrick Thompson to the Colonial Secretary, 19 November 1826, AONSW 4/1908.

On Monday morning, 20 November, the Governor returned to Sydney from Parramatta.³¹ Henry Dumaesq was still away but the *Australian* had been in contact with him and told readers that he was on the Hunter River: 'traversing this country in search of land for his Merinoes; and, we understand, [he] falls completely in with the opinion entertained by all who have seen it, as to its fertility and beauty.'³² That the paper had news of Henry Dumaesq adds weight to a possible friendship between the editor and the private secretary. That day another of Wardell's assigned servants, Joseph Monks, appeared in the Police Court. He had been charged with robbery by a fellow servant and was remanded. Again this event in Wardell's private life was recorded in the *Sydney Gazette*, but not noticed by the *Australian*.³³

On Tuesday Colonel William Stewart, both Lieutenant-Governor and the officer in command of the forces, called on Darling at Government House. At their meeting Darling gave him final directions for a military ceremony to be held in the barracks the following day. Stewart was instructed to assemble the troops in garrison and have Joseph Sudds and Patrick Thompson ceremonially divested of their uniforms, then dressed as convicts and laden with irons 'of rather a heavier description than ordinary'. These were to be removed on their return to Gaol, and later they would be sent 'to a distant Road Party to be Worked in the usual Irons.'³⁴

On Wednesday the ceremony of degradation took place on the Parade Ground. The two prisoners were taken from the Gaol to the Barracks at 10.30, and there dressed in regimentals.³⁵ About 11 o'clock they appeared on the barrack square, handcuffed and accompanied by the Sheriff's officers. The waiting

³¹ *Sydney Gazette*, 22 November 1826.

³² *Australian*, 22 November 1826.

³³ *Sydney Gazette*, 25 November 1826.

³⁴ Stewart to Darling, 14 December 1826, *HRA*, series I, volume XII, pp.757 - 758.

³⁵ Examination of Patrick Thompson in *Papers Relating to the Punishment of Joseph Sudds*, 14 July 1828, p.48.

troops were assembled in a square about them with shouldered arms, amongst them were the Royal Veteran Companies under Captain Robert Robison.

Brigade Major Henry Gillman issued a General Order which revealed the changes to the courtroom sentence which the Governor had decided on -

The Lieutenant-Governor, in Virtue of the Power with which he is vested as Governor in Chief, has thought fit to commute the Sentence, and to direct that Privates Joseph Sudds and Patrick Thompson shall be worked in Chains on the Public Roads for the Period of their Sentence, after which they will rejoin their Corps.

The General Order referred to other soldiers who had attempted to evade their service and the punishments that had been inflicted. It was emphasised that Sudds and Thompson excluded themselves from all claims to military pay during their period as felons and any claim to a pension.³⁶

The day was not particularly hot. Later in the week temperatures rose and, as the whole episode became twisted and distorted, men's memories became confused, and the day was described as one of great heat, which was seen as a contributing factor in the mistreatment of the two soldiers.³⁷ At 7am it was 70°F and by mid-day it had risen to 74°F, and there were 'light breezes.'³⁸

Colonel Stewart accused the two men of bringing disgrace upon the regiment. He reiterated the changes which had been made to their sentence reminding them that they would be worked in irons and returned to the regiment after their period of imprisonment. They were ordered to strip naked in front of their comrades and change from their uniforms into debasing convict yellow

³⁶ *Ibid.*, General Order, 22 November 1826, pp.721 – 722.

³⁷ In 1835, during the House of Commons Select Committee hearings into Darling's conduct, Captain Robert Robison made the time of year mid-summer and said the temperature 'would have stood at 100 [F.] in the sun'. Another witness, Norman McLean, rejected the possibility that it could have been 'a nice cool day, the temperature about 70°' and placed it 'beyond 80°'. The Committee questions referred to the temperature records in the newspapers but made no effort to check them. *Report from Select Committee on the Conduct of General Darling while Governor of New South Wales, with the Minutes of Evidence, and Appendix*, 1 September 1835, pp.5 – 6, 105.

³⁸ *Monitor*, 1 December 1826. The Fahrenheit temperatures over the period from Wednesday 22 November until Monday 27, the day of Sudds's death, taken at 7am and mid-day were – Wednesday 70 and 74; Thursday 71 and 75; Friday 80 and 91; Saturday 81 and 95; Sunday 76 and 83; Monday 74 and 75.

uniforms. Irons were riveted to their bodies. A specially constructed iron collar went around each man's neck, and was connected by chains to the irons around their ankles. They were of unusual design and intended to impress. Given the great controversy that was to arise about these objects the *Australian* gave its readers a bland and dispassionate description - 'When attired in their new garb, irons were placed on them, and a chain collar placed around their necks.' It was Saint Cecilia's Day (the patron saint of music) and the music played in Sydney that day was the Rogues March performed by four drummers from the band. In their new clothes and newer chains Sudds and Thompson were marched to the eastern gate of the barracks and handed over to the civil authority for their return to the Gaol. The *Australian* reported that 'The two soldiers put on a look of indifference.' The ceremony was performed on the parade ground between eleven and twelve o'clock.³⁹

On Thursday 23, between twelve and two, Joseph Sudds again complained of being ill. He was admitted to the Gaol Hospital, and his chains were removed about four o'clock.⁴⁰

On Friday the *Monitor* was concerned with the effect of the influenza, or catarrh, which was responsible for more deaths among the European and aboriginal populations. The paper claimed that the epidemic had killed a 'comparatively trifling' number of prisoners in the gaol.⁴¹

Laurence Halloran was still incarcerated, but perhaps not wasting his time. The *Monitor* published a letter of literary criticism of *Wild Notes from the Lyre of a Native Minstrel* signed 'H' - possibly Halloran.⁴² He may also have helped his fellow prisoner Patrick Thompson petition the Chief Justice. A possibility that Thompson petitioned Forbes is tantalizing, but un-provable - for apart from

³⁹ *Australian*, 25 November 1826.

⁴⁰ Executive Council opinion, 12 December 1826, *HRA*, series I, volume XII, pp. 748 - 749.

⁴¹ *Monitor*, 24 November 1826.

⁴² The first poetry book published in Australia written by a native born. It was dedicated to his teacher the Reverend Henry Fulton. Charles Thompson, *Wild Notes from the Lyre of a Native Minstrel* (Sydney, 1826). *Monitor*, 1 December 1826.

several clues it was never mentioned in the official investigations into the Case, and no document has been traced in archival searches. Two references suggest a petition existed. On 1 December the *Monitor* wrote that 'A Petition for mercy, and setting forth the illegality of adding (as he expressed it, "in so cruel a manner") to his civil sentence, was presented to a Member of the Council on Friday last.'⁴³ If this was so then, apart from the Governor, the most likely person to whom an appeal for redress of an 'illegality' would have been sent was the Chief Justice. In 1831, a letter by Laurence Halloran in the *Australian* claimed that 'I dictated on his [Thompson's] behalf a petition to the Chief Justice for relief'.⁴⁴ If a petition went from Thompson to the Chief Justice, it went no further. If it existed, the petition was written before the death of Sudds. If a serious and competent indictment of the legalities of what had happened, it may have directed critical attention towards the Quarter Sessions trial when Sudds and Thompson had been sentenced. A criticism of his courts, especially as the controversy was growing, may have been unwelcome by the Chief Justice – and may account for the petition's disappearance.

That Saturday the *Sydney Gazette* printed the Government Order concerning Sudds and Thompson with an account of their degradation the previous Tuesday. A reward of £20 was offered for the return of the Macleay family's plate.⁴⁵ The *Australian* was interested by Sudds and Thompson, while unsympathetic towards them. The editorial supported their treatment: 'The avowal, which these men made at the time of the trial, rendered it requisite both that extraordinary ceremonies should be observed in discarding them from the regiment, and that somewhat of unusual severity in their sentence should be ordered.' The paper discussed the men's motives and considered their 'delusion' that a prisoner was better off than a soldier. Only towards the end of the text was there any criticism of the men's treatment. Wardell had not seen the 'chain

⁴³ *Monitor*, 1 December 1826.

⁴⁴ *Australian*, 1 April 1831.

⁴⁵ *Sydney Gazette*, 25 November 1826.

collar' and described it as being 'encumbered with the massive neck collar and other unusual chains.' He assumed the pair were to wear the chains while working on the roads and that they prevented the two from resting:

That they are destined to work in them during the continuance of their sentence. This is carrying severity to an extreme, and, in our opinion, it will not be altogether justifiable. The men cannot lay their heads down to rest: and we should imagine they will find it difficult to breathe during this hot weather, while oppressed with the chains.⁴⁶

Wardell had called for these measures, he now saw their brutality.

On Sunday morning Sudds became worse and was moved from the Gaol to the General Hospital, where he died the following day.⁴⁷ Another prisoner, William Watts, was also being treated in the General Hospital and also died on Monday. Darling claimed to Earl Bathurst that the storm of controversy surrounding the death of Sudds was politically motivated, and drew attention to the complete lack of interest in Watts's death to make his point.⁴⁸

The day Sudds died Eliza Darling wrote to Edward blaming the weather for the sicknesses which had killed so many people:

I had rather you were here, even in spite of the hot winds, which have been unusually oppressive and are *worse* than any thing in the shape of *heat* I ever experienced ... these last two [months] have been *every* way unusual – unusually *hot*; unusually *cold*, giving every one in consequence unusual colds, occasioning more Deaths than have been known for years ...⁴⁹

The death of Sudds may be amongst those many deaths she was referring to, but the weather was not the only possible cause. The epidemic swept through Sydney from early November, and coincided with the arrival of the *Warspite*, *Volage* and *Fly*, and the releasing of hundreds of sailors onto the streets. Whatever the contagion was it was still present at the time of Sudds's death, for on Wednesday

⁴⁶ *Australian*, 25 November 1826.

⁴⁷ Executive Council opinion, 12 December 1826, *HRA*, series I, volume XII, pp.748 – 749.

⁴⁸ Darling to Bathurst, 15 December, 1826, *HRA*, series I, volume XII, p.752.

⁴⁹ Eliza Darling to Edward Dumaesq, 27 Nov 1826, AOT NS 953/309.

the *Australian* referred again to the prevailing illness, describing it, and the recent hot winds and dust, in terms of Egyptian plagues.⁵⁰

Quite unconnected with the death of Sudds, and the period of public criticism of the Darling Government which was about to begin, was the publication of a Government Order advising colonists that new instructions from Earl Bathurst required all correspondence for the Colonial Office to be forwarded through the Governor, and that no answer would be made to any correspondence sent direct. This step aimed to reduce delays in obtaining the local government response to matters raised. It was seen by the *Monitor* as a means of preventing the Macarthur faction attacking the governor behind his back: 'No more written mis-statements can be laid before Earl Bathurst or his successor without the Governor being previously furnished with the means of explanation.'⁵¹

On Wednesday, 29 November, the appearance of the *Australian* in the Sydney streets caused an uproar. E.S. Hall wrote in the *Monitor* that 'We have resided in this Colony above fifteen years and never did we witness such a sensation in Sydney since our arrival as that which was excited by the publication of *The Australian* ... commenting on the death of Sudds the private soldier.'⁵² Wardell's paper criticised the Governor's treatment of Sudds and Thompson, and carried the dramatic news of Sudds's death.

In the *Australian's* discussion of the incident the General Order's use of the word 'commute' to describe the alteration to the men's sentences from transportation to hard labour on the roads was contested. The paper argued that commute meant to dilute, but that the changes had increased the severity of the sentence. Darling had used a Legislative Council Act to alter the court's sentence, and Wardell claimed that parts of that enactment were contradictory.⁵³ Section 4 required the Governor to carry out the sentences of the court and Section 5

⁵⁰ *Australian*, 29 November 1826.

⁵¹ *Monitor*, 8 December 1826.

⁵² *Monitor*, 8 December 1826.

⁵³ 'An Act for the transportation of offenders to the Penal Settlements and for the more effectual punishment and security of the same', 7 *Geo. IV* No. 5, 16 August 1826.

proposed that first offenders (Sudds and Thompson) could be set to hard labour only in prison, yet Section 6 allowed the Governor to 'withdraw any person or persons now or hereafter to be transported or sent to any Penal Settlement' and set them to hard labour on the roads. As well as these inconsistencies Wardell argued that the discretionary powers of the Act gave the Governor greater powers than the King possessed in England.⁵⁴

Wardell's legalistic arguments were critical of Darling, and indirectly of the Chief Justice. Under a provision of the 1823 Act Francis Forbes was responsible for certifying that any Act passed in the colony was 'not repugnant to the Laws of England, but is consistent with such Laws, so far as the circumstances of the Colony will admit.'⁵⁵ If the local Act was flawed, because contradictory and because it really did give the Governor greater authority than that enjoyed by the King, Forbes erred in not observing these discrepancies.

The *Australian* had called for heavier chains, but now changed direction in order to criticise the Governor's actions: "Reversing the sentence", as it has been called, is decidedly wrong, as well as the use of ponderous and fancy-made chains, and the Order to work on the high roads.' Wardell also threw doubt on the legality of the men's criminal conviction. He argued that their actions did not constitute a felony because they lacked 'the intention to steal'. As they had set out 'not to steal, but to pretend to steal', to escape from the regiment, Wardell proposed that no felony had been committed. He did not draw his argument to its logical end - that the two soldiers were deserters and could be subjected to capital punishment.

Wardell had not been sent the General Order concerning Sudds and Thompson. The Brigade Major was criticised for the oversight and it was printed on the newspaper's front page 'because we have deemed it proper to make it the

⁵⁴ *Australian*, 29 November 1826.

⁵⁵ Clause XXIX, 4 Geo. IV, Cap. XCVI in *HRA*, series IV, volume I, p.663.

subject of serious comment.’⁵⁶ Wardell discussion of the topic was narrow in his definition of the word commute; legalistic in discussing whether Sudds and Thompson had committed a theft; and accurate and insightful in looking at the Act, under which Darling had acted, and asking if it was not both contradictory and whether it gave the Governor more power than that allowed for under the Laws of England. It was an all purpose attack that was both flawed and ingenious.

Wardell’s criticisms were written before learning of Sudds’s death. They had been typeset for the Wednesday edition when a letter was delivered to the *Australian* office.⁵⁷ It was a dramatic and accusatory document. Seeming to have been written inside the Gaol it offered information which suggested a close observance of the two men. The unnamed writer, after breaking the news of Sudds’s death, claimed Sudds had been ill at the time of his shaming, and that the chains had tortured both men. Wardell accepted the information at face value for, after prefacing it with two emotional sentences, he printed it for his readers:

We had scarcely finished the foregoing remarks, the ink was hardly dry, when the following announcement reached our Office:-
 “Sudds, the private of the 57 regiment, who was convicted of petty larceny, and sentenced to seven years transportation to a penal settlement, and who was, after that sentence, publicly exposed on Wednesday last in a convict’s dress at the barracks, and drummed out of the regiment (although at the time he was so ill, as to be scarcely able to stand) *died this morning!* His comrade Patrick Thomson [sic], who appears almost in a state of fatuity, and who, after his sentence by the Civil Court underwent a similar military punishment, has ever since continued loaded with chains of such a nature and form, as to prevent him from extending his body and from lying on his back, belly or side, when he would endeavour to sleep. Surely this extreme rigor for an offence, allowed to have proceeded less from dishonest principle than from a wish to obtain demission from the army, is incompatible equally with humanity and with the laws of the land of liberty, to which those unfortunate men owe their birth.”

⁵⁶ *Australian*, 29 November 1826.

⁵⁷ Until technological change occurred later in the century this type of inconsistency, where a report in one section already printed could be added to (or contradicted) by information that was printed later, was a common feature of contemporary newspapers. See Jeremy Black, *The English Press 1621 – 1861* (Thrupp, 2001), p.181.

On reading it, we were appalled. Our feelings have scarcely yet subsided; and we dare not trust ourselves to make the comments, our heart and head would dictate.⁵⁸

The *Australian* and the *Sydney Gazette* presented sharp differences in their coverage of Sudds's death. The *Australian* gave an exciting and dramatic account, in contrast the *Sydney Gazette* offered a very matter of fact reportage: 'He was seized with a sudden illness.' Moralistically the *Sydney Gazette* represented his end as a proper retribution for his crime: 'Grief at the degraded state to which his crime had reduced him, is said to have broken his heart; for throughout the whole transaction, it is now believed, he acted under the influence of his companion, Thompson, who appears a most desperate and reckless character.'⁵⁹ Other matters interested the *Gazette* that Wednesday and the affair of Sudds and Thompson was quickly passed over. The cold of earlier in the month had given way to the great heat which was in the background to Sudds's dying: 'Last Saturday temp over 100°, hot NW winds, dust in thick columns, bushfires nearby, change of wind on Sunday 'since which the weather has been somewhat more endurable.' On board the *Volage* in the harbour it had been 106°F in shade and on shore in some parts 100°F and in others 104°F. On the same day there had been fires burning on the North Shore.⁶⁰ In passing, the paper referred to problems Governor Arthur was experiencing with his critics in Van Diemen's Land and offered him a suggestion, he 'should have despatched one of his Cabinet Ministers to Downing-street, by which means his enemies would have been foiled.'⁶¹

As the *Australian* was questioning the legality of what had taken place and breaking the news of Sudds's death, Henry Dumaresq sailed back into Sydney. He was enthusiastic about the Hunter River region, and had travelled 800 miles in

⁵⁸ *Australian*, 29 November 1826.

⁵⁹ *Sydney Gazette*, 29 November 1826.

⁶⁰ *Sydney Gazette*, 29 November 1826. Note that the *Monitor*'s published list of temperatures for this day at 7am and mid-day gave them as 81 and 95.

⁶¹ Its advice may have contributed to the Sydney government taking this unusual step in mid-1827. *Sydney Gazette*, 29 November 1826.

twenty-two days, 'I have never seen anything to equal it, in richness of Soil – and it is inferior to few places in beauty of scenery ...'⁶² He immediately returned to work, publishing a request for Government House visitors in carriages to approach the back way to avoid disturbing the dying Sir James Brisbane in Macquarie Place.⁶³ He would also have been involved in any plans to respond to the *Australian's* speculation around Sudds and Thompson.

On Friday 1 December, an anonymous letter writer answered the *Australian's* claims in the columns of the *Monitor*. Signed 'A SUBSCRIBER' the letter was also published in the *Sydney Gazette* the next day. Its author's attempt to guarantee the accuracy of his words were meaningless, except to the newspaper editors who knew the real writer: 'though I have thought proper to withhold my signature to this letter, I pledge myself for the accuracy of its contents.'⁶⁴ In defending the government the writer gave the exact weight of the chains, and mistakenly claimed that Sudds became ill on Friday morning instead of Thursday.

An element the letter added into the discussion suggests a Government House connection, and even the Governor's participation in its writing. 'A Subscriber' claimed that events during the American War partially accounted for the seriousness with which the soldiers' actions had been viewed:

from our experience during the late war in America. Labour is there, as it is here, so very high that the soldiers were desirous of procuring their discharge by every possible means; and acts similar to in the General Order of the 22nd instant, were of frequent occurrence – desertion, too, became so general, that the army was in danger of being completely disorganized; there were instances of upwards of 50 men leaving the regiment at one time.⁶⁵

Several days later (4 December), in a despatch to Earl Bathurst Darling also referred to these American desertions.

⁶² Henry Dumaresq to Edward Dumaresq, 3 December 1826, AOT NS 953/315. In his letter Henry Dumaresq dates his return as Wednesday 30 November – a mistake as Wednesday was 29 and Thursday 30. He is more likely to have made an error in the date, than in the day of his return: *Sydney Gazette*, 2 December 1826.

⁶³ *Sydney Gazette*, 2 December 1826.

⁶⁴ *Monitor*, 1 December 1826.

⁶⁵ *Monitor*, 1 December 1826.

When I adverted to the extent, to which Desertion was carried in America after the Peninsular War, Regiments having lost fifty Men of a Night, being tired of the Service or desirous to get high Wages, I felt that my duty imperatively required that I should check, by every practicable means, the dangerous disposition, which had manifested itself in the Troops.⁶⁶

His comments should have been incomprehensible to the Colonial Office because nowhere in the material sent to England had the Governor 'adverted' to the topic. The only place these matters were raised were in the anonymous letter from 'A Subscriber'. Darling's words to Bathurst almost read as an admission of authorship, or at least having authorised its production. The anonymous penman may have been Henry Dumaesq, writing at the Governor's instigation, or may have been Darling himself. Dumaesq as Private Secretary was likely to have written for the Governor, and previously used an unsigned letter in a competing paper to criticise Wardell. When the *Monitor* published 'A Subscriber's' letter it may have been hinting at the letter's authorship in an ironic editorial comment regretting that the governor 'should be obliged to occupy his valuable time with such very minor concerns as those which usually appear in military notices.'

In dealing with the recent events the *Monitor* probed a Darling soft spot. It ignored the earlier colonial use of neck collars and suggested their model was drawn from the Governor's experiences in the Isle de France.⁶⁷ Darling's contact with that island, whose name evoked ideas of slavery, was easily turned to his disadvantage.⁶⁸ The anti-slavery cause was fashionable and evoked passionate responses. The paper dipped the governor into this horrid topic, and suggested that he was guilty of personal cruelty by asserting that the lumber yard irons were assembled on the pattern of those made to be worn by

⁶⁶ Darling to Bathurst, 4 December 1826, *HRA*, series I, volume XII, p.717.

⁶⁷ The Australian tradition was recalled in 1829 by John Gibbons, a storekeeper in the lumber yard, who remembered iron collars made for women prisoners in 1793 or 1794. They were equipped with two spikes of 12 to 18 inches and weighed 14 or 15 pounds. Darling to Murray, 28 May 1829, *HRA*, series I, volume XIV, pp.887 – 888.

⁶⁸ For Darling and the Isle de France slave trade see Brian H. Fletcher, *Ralph Darling*, pp.44 – 45, 56 – 57.

run-a-way maroon Negroes at the Isle of France. When completed, they were carried to the dwelling of a person of great rank for inspection, and who desired two of the four prongs which issued from the collar quadrangularly, to be taken off that the culprits might be able to take some small degree of sleep.⁶⁹

If the letter from 'A Subscriber' was a rapid and unofficial way of dealing with the *Australian's* criticisms Darling also answered the paper officially by instructing Alexander Macleay to write to the newspaper with the Government's side of the affair.⁷⁰ In this exercise to deal with public opposition the anonymous letter was written first, and was published on Friday when the Colonial Secretary's letter was being prepared. To set the matter before the public Macleay asked that his communication be published.⁷¹ Defending Government action Macleay concentrated on what had taken place. He denied the allegations made in the emotional statement to the *Australian*, and ignored Wardell's legal arguments. He stated that Sudds had been in the gaol hospital from 11 to 16 November and, according to the surgeon's report, 'was discharged apparently well'. His punishment was changed from transportation to working on the roads to serve as an example to other soldiers, and it was considered a mitigation because other prisoners had applied for a similar change. Not being on the sick list Sudds had been marched to the barracks for the ceremony. Like 'A Subscriber' Macleay mistakenly stated that Sudds reported ill on the Friday and not Thursday, when he was admitted to the Gaol hospital and the chains were removed. The source of Macleay's error was the Surgeon's Report prepared by James MacIntyre.⁷² That the anonymous letter writer made the same error further suggests a common source, and a probable Government House writer. Also like 'A Subscriber', Macleay gave the weight of the irons as 13 lbs 12 oz, and denied

⁶⁹ *Monitor*, 1 December 1826.

⁷⁰ Darling sent a copy, 'written by my direction to the Editor of the Australian', Darling to Bathurst, 4 December 1826, *HRA*, series I, volume XII, p. 717.

⁷¹ Darling to Hay, 4 December 1826, *HRA*, series I, volume XII, pp. 723 – 724.

⁷² The spelling of this surname varies in the primary sources. For clarity and consistency MacIntyre has been used throughout the text. James MacIntyre, 'Report on the Case of Joseph Sudds, late a Prisoner in the Sydney Gaol', undated, *HRA*, series I, volume XII, p. 731.

they would prevent their wearer from stretching out and sleeping. The chains were in his office and he invited the editor to view them there. The invitation must have gone out to other people. All the newspaper editors, and William Wentworth, were amongst those who went to see the already famous irons.⁷³

Wardell published Macleay's letter on Saturday. He returned to the Act, on which Darling had based his actions, now pointing out that Section 5 did not allow the courts to transport first offenders but only to sentence them to prison sentences, allowing hard labour 'within prison walls only', and not on the roads. In his first examination of the topic he had read the section as making first offenders 'liable to be sentenced to a penal colony.'⁷⁴ He did not point out that his opinion on the matter had changed. Wardell decided that the Quarter Sessions sentence on Sudds and Thompson had been 'erroneous; the transmutation of that judgment is irregular: the use of irons is indefensible.' Then he suggested that even if those actions had been lawful 'nothing can justify the employment of chains of a novel and extraordinary description, chains not to secure but to degrade, chains unknown to English law.' Again Wardell's text shows signs of having been written, set in type for publication, and added to as new material came to hand. After making this strong denunciation of the chains it is clear he had then accepted the Colonial Secretary's offer to inspect them for he changed his attitude towards them and blamed his anonymous informer for his mistake. The chains 'were neither so ponderous, so oppressive nor so torture inflicting a kind, as they appeared, when on the men, and as represented to us.'⁷⁵

The controversy over the punishment of Joseph Sudds and Patrick Thompson was seemingly coming to an end. Wardell was conciliatory towards the government claiming they had gained his respect 'because we have considered that humanity and well meaning are and have been its leading attributes.' The suffering of Sudds and Thompson was more to do with their 'inner feelings and a

⁷³ *Ibid.*, Darling to Murray, 28 May 1829, p.808.

⁷⁴ *Australian*, 29 November 1826.

⁷⁵ *Australian*, 2 December 1826.

sense of degradation than to any torture.’ Macleay’s reply was ‘fair and candid’. In conciliating the government Wardell abandoned his correspondent, admitting that, ‘in the minute points of the information’ they had published on Wednesday ‘we were not strictly accurate’. Having inspected the chains Wardell now agreed that ‘they have not those horrifying appendants, annexed to them, which would prevent the wearer from taking rest’ although ‘They are not fit for use under English laws.’ They were ‘light, and not calculated to inflict *torture*.’ So pleased did Wardell appear with Macleay’s letter that he called it ‘manly’ and ‘honourable’. If all newspaper correspondence was conducted in a like manner, said Wardell, ‘The disunions and asperities, occasioned in society by a malignant press, would then cease to exist.’⁷⁶

Wardell drew attention to ‘A Subscriber’s’ letter in the previous day’s *Monitor* and further sacrificed his own un-named correspondent, the source of the descriptive information he had printed. The letter had accused the *Australian* of publishing ‘incorrect matter’ on the topic and Wardell admitted that this detail ‘was not true – the man was NOT prevented “from lying on his back, belly, or side,” though he might, on account of the shortness of the chains which connected the collar with the shackles, be prevented from extending his body.’ Looking back, the events of the day when recalled and described became both more theatrical and stark - ‘More the shame say we, to take a sick man out of the hospital and drag him through the streets in chains, under an almost vertical sun.’ ‘A Subscriber’s’ reference to the American War caught Wardell’s attention. It was a red herring to the case, and misunderstood. Wardell took it to mean the American War of Independence: ‘-where? in America fifty years ago, during the American war! and therefore the danger of desertion here was to be averted by “some means of public degradation!”’⁷⁷ This erroneous interpretation was

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

probably in Darling's mind when he took care to point out to Earl Bathurst that the American War he was referring to was that of 1812 - 1815.

The *Sydney Gazette* had been sent a duplicate of the 'A SUBSCRIBER' letter and printed it on Saturday, without adding any editorial comment. Sudds and Thompson were dealt with in a long article. The paper questioned Wardell's definition of 'commute' as meaning to change for 'the better' whereas the *Gazette* argued that its meaning was 'to exchange.' Howe had consulted Samuel Johnson for his *A Dictionary of the English Language* gives the meaning of 'commute' as 'To exchange; to put one thing in place of another; to give or receive one thing for another.'⁷⁸ The paper gave its opinion that it was preferable to serve on a road gang than to be transported to a penal colony. It also claimed that the chains on use on the hulks were, at 60 or 70 lbs., far heavier than those used on Sudds and Thompson. Howe had also examined the chains and commented that 'it was intended the punishment should produce a moral not a corporeal effect.'⁷⁹ Wardell was mocked for complaining that his paper not being supplied with a copy of the General Order and this was suggested for his annoyance with the government: '... [he is] not to be slighted with impunity.' During this time the St. Andrew's day dinner had been held and the Governor had been toasted as the band played 'Charley is my Darling.' In its regular shipping column, it was mentioned that the *Corsair*, would sail for England on the following Tuesday, 5 December, and the *Regalia* on the 20th.⁸⁰

On Saturday the white flag of France was seen in Sydney Harbour. Amongst the onlookers were men who had helped bleach from it the disfiguring revolutionary additions of blue and red. The *Astrolabe*, a corvette with a crew of 82 and 12 guns, made her way into port to see the astonishing sight of the 74 gun

⁷⁸ Samuel Johnson, *A Dictionary of the English Language*, two volumes, (London, 1810 [1755]).

⁷⁹ *Sydney Gazette*, 2 December 1826.

⁸⁰ *Ibid.*

Warspite towering over the town.⁸¹ Robert Howe was more outraged by the mistreatment of an animal in Parramatta Road than he had been over the punishment of Sudds and Thompson. He had seen a carman hold a burning tree under a horse's head and belly - 'part of the animal was lost in the blaze.' Defending himself to the outraged spectators 'the monster said the horse was his own!'. Howe laid charges and the man was to appear before the Superintendent of Police.⁸²

It was an optimistic weekend at Government House. Alexander Macleay and his family joined the Darlings on Sunday for the christening of the governor's new Australian-born son. Brought into the world by an emancipist surgeon he was named Augustus (the first Roman emperor), in St. Phillip's church, by Archdeacon Scott.⁸³ During the day Henry Dumaresq wrote to Edward. Amongst the family news he remarked that three ships were soon to leave the colony, one for Van Diemen's Land, 'a vessel is likewise under despatch for London', and another was due to leave for the Isle de France. Eliza had recovered from childbirth for she was busy and 'as happy as possible.' William was working on the Bathurst Road and due to return the next day. Problems that had arisen about the death of Sudds seemed to have passed, for Henry mentioned the newspapers 'of this date' and complimented the *Australian*: 'you will see how candid and complimentary the Editor of the Australian is.'⁸⁴ Henry's confidence seemed well founded. The government had explained the matter in the correspondence columns and Robert Wardell had accepted their arguments, and even complimented the government for their response.

Francis Forbes heard on Monday that the *Corsair* was to sail the following day so, before an Executive Council meeting, he wrote to Robert Wilmot

⁸¹ *Australian*, 6 December 1826; *Sydney Gazette*, 6 December 1826. The *Success* and *Volage* were also in port and the *Fly* had only recently sailed: Darling to Hay, 4 December 1826, *HRA*, series I, volume XII, p.730.

⁸² *Sydney Gazette*, 6 December 1826.

⁸³ *Sydney Gazette*, 6 December 1826; Henry Dumaresq to Ann Dumaresq, 4 December 1826, ML A2571.

⁸⁴ Henry Dumaresq to Edward Dumaresq, 3 December 1826, AOT NS 953/315.

Horton. In passing he praised the 'Governor's good sense'. He did not directly mention the treatment of Sudds and Thompson, nor Wardell's newspaper claim of inconsistencies within the local Act he had approved. However, in recommending that press controls be passed in London over the colonial newspapers he may have made an allusion to those critical remarks the *Australian* had made on the legalities of the incident: 'All writings, which attack the magistracy, or even use freedoms with the government, tend to unsettle the prison discipline. Writings, which pretend that the prisoners of the Crown are illegally or harshly dealt with, are dangerous to the public safety.' His letter also included a second draft of the 1828 Bill, which he again failed to discuss with the Governor.⁸⁵

That night the Benevolent Fund Concert was held in the Court House. The *Astrolabe* officers who were present saw the last amicable blending of Sydney society, during the Darling years. Although previous concerts had not always been harmonious for only recently the *Monitor* had criticized local dandies for '*hissing* what the audience *most applauded*' and suggested that 'These brilliant Dandies should leave such folly at home ...'⁸⁶ Despite being a patron Darling was preparing despatches for the morning sailing of the *Corsair* and did not attend. The unexpected departure of the vessel had disrupted the Governor's plans, and he decided not to accompany his wife, despite Henry Dumaresq's entreaties. This small reference offers an indication of the working association between the Governor and his Private Secretary, and also Darling's strength in holding out against the persuasive Dumaresq. It suggests an ease of communication between the two men, and that in private there was little standing on ceremony or reserve in their relations:

It has happened inopportunately, and I have used a good Deal of persuasion, to no purpose, to endeavour to get the General to *shew* himself – and I regret that he has not done so – I would have had

⁸⁵ Forbes to Horton, 4 December 1826, *HRA*, series IV, volume I, pp.644–646.

⁸⁶ *Monitor*, 6 October 1826.

him do this, if only for 5 minutes – and we have the night before us – but where is the use of saying anything about it?⁸⁷

Quills blackened the pages and the lights burned at Government House as the audience in the nearby Court House heard Weber's overture from *Der Freischutz* and songs including 'Oh Rosa, when you quit the spot', 'Flow thou regal purple stream', 'Bid Me Discourse'. Even without the Governor the Government House party was considerable - Mrs Darling, Lieutenant de la Condamine, the Colonial Secretary his wife and daughters, Captain William Dumaresq (returned from Bathurst), and the Chief Justice. Henry Dumaresq may have made a brief appearance for he is listed in one of the reports although the reporter, intoxicated with uniforms and braid, may have mistaken the captain for his colonel brother. The audience applauded and then encored the new song 'Cherry Ripe' which had been recently made popular in London by Madame Vestris.⁸⁸

After the concert was finished the flurry of letter writing continued. In Macquarie Place, Fanny Macleay was awake till after midnight writing to her brother William in Cuba.⁸⁹ At Government House the Governor and Henry Dumaresq kept three clerks writing into the night.⁹⁰ Henry took time to write to his mother telling her a vessel was leaving the following morning and 'We have serious matters of much moment to write about.' Henry told his mother of his recent travels and of the christening of her grandson. As she had expressed dislike of the *Australian* he sent her copies of the *Sydney Gazette* and defended the *Australian*:

I take you at your word about not sending the "Australian" – altho' – nothing can be more complimentary than it generally is – when

⁸⁷ Henry Dumaresq to Ann Dumaresq, 4 December 1826, ML A2571.

⁸⁸ *Australian*, 6 December 1826; *Sydney Gazette*, 6 December 1826; *Monitor*, 8 December 1826.

⁸⁹ Earnshaw and Hughes, *Fanny to William*, p.71.

⁹⁰ A.C.V. Melbourne overlooked that the *Corsair's* sailing was Darling's first opportunity, since the death of Sudds, to communicate with the Colonial Office: 'The incident [Sudds and Thompson] was not reported to the Secretary of State, until it became obvious that the press intended to seize upon it as offering an opportunity to discredit the government.' Melbourne, *Early Constitutional Development*, p.133.

speaking of the Govt. ... I may perhaps pocket its cost as you do not relish its flippancy – and the bare *truths* it speaks on some *heads*.⁹¹

In a private despatch to Hay Darling stated that 'I had not heard until just now that the Corsair is to sail to-morrow Morning for England. Her sudden departure has probably been occasioned by some Mercantile Speculation.' He used this suddenness of departure for not including all the letters that are 'in preparation.'⁹² Among the important matters was the French presence. Historian Manning Clark wrote of the 'Fear of the French, a chronic mental disease of the English over the whole period', but he had not seen the 1803 plans drawn up by François Péron for the invasion of Sydney.⁹³ Alexander Macleay thought the French expedition was after territory and was suggesting to the Governor that further settlements be established at King George's Sound and Westernport.⁹⁴

This was the Governor's first opportunity to write to London about the events involving Sudds and Thompson, and Sudds's death. Darling wrote about the incident to both Earl Bathurst and Under Secretary Hay. Explaining to Bathurst that the event had been 'misrepresented' in the *Australian* on 29 November Darling feared it could 'have an ill effect at home', and went to some length to justify his actions. His despatch was heavy with enclosures: extracts from the *Australian*, a copy of his General Order covering the treatment of Sudds and Thompson, a copy of the Colonial Secretary's letter to the editor of the *Australian*, and an extract from the colonial Act under which he had acted.⁹⁵ Problems with the *Australian* seemed, he believed, to have been resolved by Macleay's letter - the editor 'admits that his statement was inaccurate.'

⁹¹ Henry Dumaesq to Ann Dumaesq, 4 December 1826, ML A2571.

⁹² Darling to Hay, 4 December 1826, *HRA*, series I, volume XII, p.725.

⁹³ M. Clark, *Sources of Australian History* (London, 1965 [1957]), p.143.

François Péron, 'Mémoire sur les établissements anglais à la Nouvelle Hollande, à la Terre de Diémen et dans les archipels du grand océan Pacifique', *Revue de l'institut Napoléon*, 1998 – I, No. 176.

⁹⁴ The concern was shared by the Governor, who despatched an expedition. Earnshaw and Hughes, *Fanny to William*, p.71, Darling to Bathurst, 10 October 1826, *HRA*, series I, volume XII, pp.639 – 640.

⁹⁵ Darling to Bathurst, 4 December 1826, *HRA*, series I, volume XII pp.716 – 725.

Darling had taken the events seriously and investigated what had occurred. A medical report had been prepared by the Assistant Surgeon James MacIntyre and Darling told Hay that this showed Sudds had died not from the application of the chains but from 'his determination not to take any sustenance, which was as likely to be the effect of his indisposition as of any feeling of his situation at that time.' Darling also revealed mistrust of James Bowman, the Principal Surgeon, who was a son-in-law of John Macarthur and a member (as Darling had already told Hay⁹⁶) of his 'Party'. Darling suggested Bowman had prevented James MacIntyre amending his medical report on Sudds to suggest the possible influence of bronchitis. MacIntyre had twice told the Governor and Alexander Macleay that Sudds had had 'an inflammation of the Chest and Throat' at the time of his death. This was not in his report, and he was prevented from adding it in by Bowman. Darling saw a 'sinister purpose' in this and believed it would, no doubt through the Macarthur 'Party', end up appearing as part of an anti-government article in London's *Morning Chronicle*. A copy was enclosed with his despatch. In it MacIntyre found 'no apparent disease' to explain Sudds's death.⁹⁷ If Bowman had interfered to prevent MacIntyre changing what he had written he had also saved Darling from later accusations of tampering with the evidence.

After writing his official letter to Bathurst Darling wrote him a 'Secret and Confidential' despatch, discussing the legal aspects of the incident which he had not been willing to place in his public communication. He revealed that he had already asked the Acting Attorney General for an opinion on the events but had not yet received it. Darling suggested the Quarter Sessions had 'exceeded their powers' in sentencing the two men to transportation. He believed he had the authority to change the sentence but admitted that 'if the Sentence was illegal, the

⁹⁶ *Ibid.*, Darling to Hay, 1 May 1826, p.256.

⁹⁷ *Ibid.*, Darling to Hay, 4 December 1826, pp.730–731.

subsequent proceeding founded on the assumption of its legality may possibly be illegal also.⁹⁸

Finally, after working through the night, Darling's mail bags were closed and carried to the *Corsair*. However, the vessel's departure was delayed, so that Francis Forbes could complete and include his letter for Robert Wilmot Horton. With Forbes's letter went his amended draft of the New South Wales Bill.

Sudds Thompson had been a government ceremony which had gone terribly wrong. Public, ritual punishment, had been successfully used by Darling since becoming governor. Earlier, in punishing condemned bushrangers and other malefactors, he and his officers had invented ceremonies - church bells were rung, gibbets set up by the roadside, men sent through the streets to their deaths. Mustin, and the other bushrangers, had been dressed in caps and ribbons, Sudds and Thompson in convict yellows; a halter was placed around the bushranger's necks, an iron collar around Sudds and Thompson's; bells tolled in church towers, the Rogues March was played by drummers.

These punishing ceremonies were public spectacles, stage managed and directed for maximum effect. The nakedness of Sudds and Thompson was a theatrical and dramatic part of their shaming. Darling's hanging of bushrangers close to the scene of their crimes had received glowing press reviews. When he attempted a parade ground ceremony, with marvellous dramatic possibilities, it had miscarried. For this latter performance he had lacked the presence of Henry Dumaesq. With the bushrangers his Private Secretary had encouraged the condemned men to adopt attitudes towards dying that accorded with the serious intent of the ceremony created around them - Mustin especially had co-operated admirably. If Henry Dumaesq had been present in Sydney, in the lead up to Sudds and Thompson, he would, given his previous behaviour, have visited them to persuade them to co-operate in their ceremony – that they were both soldiers would especially have caught his attention. If Dumaesq had done so,

⁹⁸ *Ibid.*, Darling to Bathurst, 4 December 1826, p.715.

Government House would have been made aware of Sudds's health – he may also have realized that, given their attitude towards authority exhibited during their trial, they were unlikely to be co-operative actors in a dramatic moment concocted around their own debasement. In carrying out his disgracing of the two soldiers Darling was directing a theatrical act without the help of his talented stage manager.

Although the allegations made by the *Australian* over Sudds and Thompson had been troublesome they looked to have been successfully resolved. When the problem had arisen senior members of the administration worked together to publicly answer the criticisms, and privately to inform themselves of what had taken place. The anonymous letter from 'A Subscriber' may have been unconventional but it seemed a clever, and effective, way to handle the press. Relations between the Government and the *Australian* had been good throughout the year and this understanding between the two parties had no doubt contributed to the alacrity with which Wardell had turned his paper back to their support after receiving Macleay's explanations. Harmony appeared restored, though perhaps the *Australian's* unnamed correspondent was disappointed at having his claims rejected by both the Colonial Secretary and the newspaper editor. By Tuesday morning, 5 December, Darling and his officers believed the situation had been sorted out, and the Colonial Office was fully informed so that they could respond to any repercussions detected in London. The sailing of the *Corsair* seemed the end of the incident.

Chapter Fourteen

The Case is made

On Wednesday morning 6 December 1826 the *Australian* went on sale and what it published turned the treatment of Joseph Sudds and Patrick Thompson into the Sudds-Thompson Case. The two men had been disgraced in a parade ground ceremony, Sudds had died, the *Australian* had dramatically published the news of his death and queried what had taken place, the Government had responded, and the newspaper had accepted its account. In its previous edition, on Saturday, the *Australian* had seemingly come to the end of its criticism, and Government House believed the incident was sensibly resolved. Now the paper accused the Governor of conspiracy. What the *Australian* published before had been robust criticism, what it published now turned the men's punishment into a political Case.

The thieves, Sudds and Thompson, had been principal players in a ritual performance which introduced them in their formal regimental uniforms and transformed them into shackled convicts. Each step in the ceremony had been planned - they were marched from the Gaol to the barracks to be disgraced before the soldiery, lectured by their officers, forced to strip naked and dress in convict yellows, shame-making collar and chains were riveted to their bodies, the Rogues March was played, and they were marched back to the Gaol. The ritual was intended to draw onlookers. They were seen in the streets by the population, the military were assembled to be the audience, and the performance was reported by three newspapers.

Sudds had died. His death was unplanned, but allegedly it turned the moralistic ceremony into a cruel act of torture. Darling faced newspaper criticism, and community concern, and reacted to contain the situation in typical and predictable ways – earlier he called for a medical report, now he established

an Executive Council Inquiry. Far less predictably, given the support offered Darling since his arrival in Sydney, the *Australian* harassed the man and his government. No previous governor of New South Wales had ever had to contend with such passionate press violence against himself, and his administration.

On Saturday Wardell had been conciliatory, on Wednesday he was very angry. He claimed Tuesday's sailing of the *Corsair* had been kept secret to ensure Darling's version of Sudds's death would be the first to arrive in London: 'Her projected departure was kept a profound secret from everybody, save one or two of the *particular* friends of the charterers or owners!!'¹ The claim was untrue, and easily disproved, the sailing had been advertised as normal in Saturday's *Sydney Gazette*.

Also in the *Australian* was a provocative letter dealing with the two soldiers which offered new facts, reiterated criticisms answered by the Colonial Secretary and 'A Subscriber', and called the soldiers' treatment 'cruel and unjust'. The event allowed conflicting memories to arise, and be debated, and now the *Australian* offered details which no other published accounts had revealed. The letter was dated the previous Saturday, 2 December, and claimed to represent five people who had seen Sudds and Thompson. As the details they gave had to do with incidents inside the prison they were presumably gaol prisoners. To make the point of multiple witnesses it was signed using the Latin for five – QUINQUE.² The authors claimed responsibility for the earlier message, published by the *Australian* on 29 November, which had brought the news of Sudds's death to Wardell. That note, which depicted an enfeebled Sudds, had stirred the editor, and was the source of Governor Darling's complaint to Earl Bathurst on 4 December of the 'misstatements' in the *Australian*.³

¹ *Australian*, 6 December 1826.

² It may also be an oblique, and school masterly, reminder of the Latin phrase 'quinquennium Neronis' or Nero's five years. A reference to the early years of his rule which, compared to the brutality of the later period, seemed a Golden Age. M.C. Howatson editor, *The Oxford Companion to Classical Literature*, Oxford, Oxford, 1989, p.478.

For a transcript of the 'Quinque' letter see Appendix Three.

³ Darling to Bathurst, 4 December 1826, *HRA*, series I, volume XII, p.717.

'Quinque' may have represented five witnesses, but its authorship was claimed, posthumously, by Laurence Halloran in April 1831.⁴ Halloran was in Sydney Gaol at the time, was a known newspaper writer, and had established links with the *Australian*. He was ideally placed to act as a conduit for opinions of what was happening in the prison to Robert Wardell.

Defending Governor Darling in the *Monitor* and *Sydney Gazette*, 'A Subscriber' turned Halloran's pen against the government. The 'Quinque' signature may have been chosen to disguise Halloran's, and also to demand greater importance by claiming it represented the views of five other people. If it did represent multiple witnesses one of them may have been Laura Shortt, Halloran's daughter, imprisoned for larceny, and the others were probably also prisoners – or even members of the large Halloran family. Much of what had been contained in the first message from the Gaol had been denied by 'A Subscriber', and 'Quinque' was stung into replying by this questioning of his/their truthfulness – Halloran was a liar and a forger and sensitive regarding his personal honour. If Halloran/Quinque suspected 'A Subscriber's' letter originated inside Government House, he/they may have assumed it was a government attempt to muzzle discussion. Either way it was safer to tackle another anonymous author than to challenge the veracity of the Colonial Secretary, whose letter of explanation to the *Australian* made much the same argument as 'A Subscriber'.

From the publication of 'Quinque's' letter onwards the reputation of Ralph Darling, and his government, was compromised. 'Quinque' gave details of events that had taken place within the Gaol, claiming that Sudds needed assistance walking downstairs from the cells to the prison gate, and that when he returned from the Parade Ground he was supported by two men. No press reports had

⁴ The letter in which these claims appeared, signed VINDEX, was published after Halloran's death - *Australian*, 1 April 1831. His use of the VINDEX signature is attested by the earlier obituary notice in the *Australian*, 18 March 1831: 'We have still on hand several detached pieces of poetry and prose, from the pen of VINDEX, HAMPDEN, and THISTLE, committed to our charge some days previous to the demise of the talented Author, which claim an early place.' The copies of the letters he had enclosed were not reproduced.

described Sudds's debilitated state at the time of the ceremony. 'Quinque' offered to support these claims under oath. The letter proposed that a deliberate attempt had been made to disguise the facts by moving Sudds, obviously dying, from the prison to the General Hospital to avoid a coronial inquest. The *Australian* editorialised that if Sudds was as ill as 'Quinque' claimed he 'was fitter to be in bed, wrapt in flannel, and sipping possets and wheys, than to be reported convalescent.'⁵

'Quinque' interpreted 'A Subscriber's' letter as an insinuation that those criticising the treatment of Sudds and Thompson were doing so to attack authority. He/they professed support for authority in general terms, then attacked it as tainted:

But if a cruel, or unjust act be publicly perpetrated by order, or even by tolerance of persons in authority; the very circumstances of their rank and power, renders the precedent more dangerous, and more strongly demands notice and animadversion.⁶

'A Subscriber' had referred to desertions in America. 'Quinque' ridiculed this as an irrelevant defence of 'illegal severity'. In an aside, which never received any further examination, the letter claimed Sudds real name was Jones, and that he came from Bradford where he had a wife and family. This detail may indicate some real personal contact with Sudds.

In a postscript, 'Quinque' revealed that Patrick Thompson had broken his chains saying he preferred to die rather than continue such suffering.⁷ Wardell had seen Thompson's irons on the floor of Alexander Macleay's office and denied, on Saturday, that they were designed to torture. Now he published 'Quinque's' accusing letter, and also offered a detailed description of the collar and chains. He now pointed out that if the chains became wrapped around the body of the wearer they would so contract his body that the result would be torture.

⁵ *Australian*, 2 December 1826.

⁶ *Australian*, 6 December 1826.

⁷ *Australian*, 6 December 1826. A transcription of this letter appears in Appendix 3.

When Laurence Halloran's claim to be 'Quinque's' author was published it also included his assertion that he had written a petition on behalf of Thompson (as previously discussed) to Chief Justice Forbes:

The sufferings of Thompson from the insufficient length of the connecting chain from the neck collar to the ankle basil, were of an excruciating nature, preventing him from standing upright, and from the extension of his limbs, when in a recumbent posture, "of which I had ocular proof". In consequence, I dictated on his behalf a petition to the Chief Justice for relief, and a letter explanatory of his case, which appeared in "The Australian" newspaper at the time, and of which I enclose copies for your information.⁸

In this statement Halloran, only four years after the events, so shrunk the chains as to prevent Thompson from even standing.

This same day, 6 December, was the date chosen by William Wentworth, in his impeachment of Darling in March 1829, as that on which the Governor had sought his assistance in dealing with the *Australian*. Before 6 December Wentworth's name had not appeared in the press commenting on the incident but, according to Wentworth in 1829, on this day the Acting Attorney-General, W.H. Moore, had called on him

as the bearer of an official message from the Governor grounded on my supposed connection with, or influence over, the "Australian", to the following effect: "To request, for God's sake, that I would exert my influence with the "Australian", and put a stop, if possible, to the observations which it continued to make on the case of Sudds and Thompson; that those observations had been most painful to the Governor; and that his Excellency solicited my advice, and would follow any advice I should give him."⁹

Wentworth's account was disputed by Darling and Moore, but in it he advised the Governor to comply with the advice already offered by the press and hold an inquest into the death of Sudds.¹⁰ In this supposed exchange Wentworth claimed the Governor was wrong to think he had any influence over the *Australian*, for his

⁸ *Australian*, 1 April 1831.

⁹ Wentworth to Murray, enclosure in Darling to Murray, 1 March 1829, *HRA*, series I, volume XIX, p.825.

¹⁰ Discussion of this claim took place during the 1829 Executive Council examination of Wentworth's impeachment letter. See *HRA*, series I, volume XIV, pp. 798, 825, 880 - 881, 891 - 892.

connection with the paper was over and 'that, if I did possess any private influence with the editor of that paper, I should certainly not use it in the way requested by his Excellency'. He told Moore to tell Darling that he was going to prepare a letter of impeachment for transmission, through Darling, to the Secretary of State for the Colonies. Several days later Darling's reply was passed on to him when he 'casually' met Moore. Darling, he was told, had found his words 'manly and honourable.' Any contact between the two men ceased, always according to Wentworth's account, but afterwards he was 'exposed to an incessant system of persecution' by the Governor.¹¹

Moore, questioned about Wentworth's account in 1829, said he had seen Wentworth, at Darling's request. Moore could not recall the exact language used but agreed that he had relayed a request from Darling to Wentworth asking him to use his influence to stop the *Australian's* criticisms. Given the leading role historians have attributed to Wentworth in the Sudds-Thompson Case here, at an early stage, Darling sought the help of Wentworth against Robert Wardell.

Moore's testimony broadly agreed with Wentworth in that the latter replied that he had no influence over the *Australian*. Moore, however, added that Wentworth had justified the newspaper's interest by saying that while the matter was being commented on by the *Sydney Gazette* it was justifiable for the other papers to respond.

Over the question of the Governor's impeachment the two men's accounts varied. According to Moore the Governor had already been informed by Wentworth of his intention to impeach him, and he had been asked by the Governor to urge Wentworth to complete his charges and send it by a vessel due to sail soon and to give the Governor the copy 'Mr Wentworth had pledged himself to give him.' Moore also added to the record that Darling had discussed with him his desire to bring the matter before the courts, and offered to co-operate with Wentworth to do so. Moore, as acting Attorney General, advised

¹¹ *Ibid.*, p.825.

the Governor that this would not be possible. Darling asked Moore to repeat this to Wentworth, which he did. Wentworth, according to Moore, accepted that his legal view of the matter was correct.¹²

Wentworth's dating of this conversation on 6 December may be inaccurate, for on this date the newspapers were not calling for an inquest into Sudds's death. That day 'Quinque' did claim that an inquest had been avoided, but, in the same issue, Wardell put forward an opposing view. He believed that an inquest would have allowed a cover-up - 'But had there been a desire to play tricks, or resort to evasions, the way to do it would have been to call a Coroner's Inquest.'¹³ If Wentworth was already planning to impeach Darling, it had not yet been mentioned by the press.

The unfolding events in this first part of the Sudds-Thompson Case were punctuated by ships' sailings. There had been a flurry of letter writing to take advantage of the *Corsair's* departure on 5 December, now the next opportunity for sending despatches to London was approaching, for the *Regalia* was being advertised to sail on 20 December. Darling called a two day Executive Council Inquiry which opened on Friday 8 December. As the *Regalia* would be carrying bulky mail bags with letters from the settlers, and marked copies of the newspapers, Darling acted to ensure that the testimony of men who had dealt with Sudds in the prison, and the details of his collar and chains, would be placed with the Colonial Office to counteract the criticisms of his actions which would be sent to them.

Chief Justice Forbes was present during the Inquiry; if he had been petitioned by Patrick Thompson he made no mention of it. Almost nine months afterwards, by then strongly opposed to Darling, Forbes wrote to Wilmot Horton that he had strong reservations about the way the Inquiry had been conducted. He complained of Henry Dumaresq, who acted as Clerk of the Council and kept the

¹² Darling to Murray, 28 May 1829, evidence of W.H. Moore to the Executive Council, *HRA*, series I, volume XIV, pp.891 – 892.

¹³ *Australian*, 6 December 1826.

minutes of the Inquiry. Forbes discredited Dumaresq, who was on his way to London as Darling's special emissary, and offered speculation about the Colonel's character he would not have allowed in his own court. Forbes undermined Dumaresq's integrity, by hinting at impropriety while simultaneously denying it. He also claimed to have 'real concerns' for the honest recording of Council deliberations by Dumaresq, yet neither as Chief Justice nor a member of the Executive Council did he voice them in Sydney. This was a serious issue, impugning the honesty of both Dumaresq and Darling. Forbes revealed 'objections in principle' which should have been broached officially with the Governor, and not whispered into Whitehall – nor possibly at his own Macquarie Place dining table. In enmity Forbes wrote:

I always thought it inexpedient and unbecoming. However gratuitous the services rendered, there appeared a want of grace in two brothers being seated at opposite ends of the Council-table – one as the King's representative, the other as the Clerk. There was also a substantial objection – I, for one, felt that we had no guarantee that our proceedings would be faithfully recorded, save the individual integrity of the Colonel himself. Take, for example, the case of Sudds the soldier – the Governor instituted the examinations in the Council, for the purpose of clearing himself from censure – they were taken in presence of the Council and afterwards entered fair by the Clerk – some of the statements were not exactly in unison with what had been expected, and was evidently desired – I need not draw any inference of inducement in such a case to shew what might be done – I am confident that nothing unfair was done – but the case I have put did occur; and it is sufficient to show the liability to suspicion, and consequently the objections in principle to so intimate an alliance between the head of government, and the clerk of the Council.¹⁴

On the day the Inquiry opened, several lines in the *Monitor* pointed to a topic with far more importance than its brevity indicated. The newspaper reported that Sir Thomas Brisbane had been delayed in Rio and arrived in England after the close of Parliament: 'this was very unfortunate for Sir Thomas and the

¹⁴ Forbes to Horton, 5 September 1827, ML A1819.

Colony ... we feel confident he will do himself and the Colony justice in due time and place.' A farfetched hope, that must by now have been becoming clear to those who had tried to use him during the dinnerist crisis. As Darling became entangled in the mesh of Sudds-Thompson, Brisbane's inability to fulfil the promises he had given, to use his influence in London to push forward the movement towards some form of representative government, and trial by jury, was becoming unmistakable. After the surge of political energy in October 1825, the comparative lack of public opposition which Darling faced in his first eleven months may in part be attributed to his natural opponents waiting to see the results of Sir Thomas's advocacy of their cause. As it became ever clearer that Brisbane would accomplish very little for his former subjects, some bitterness may have been transferred towards his successor. As the leaders of the moves for constitutional change confronted the evidence of their ex-governor's failure they were aware that the new parliamentary Act for governing New South Wales was being prepared. Their Whig Brisbane had let them down, and his failure may have lead the most active political oppositionists to look with increasing displeasure upon the activities of his Tory successor. If political change was to occur, other means than the promises of colonial governors would be needed to give them that share in governing themselves they desired.

The two day Inquiry considered what happened (it did not consider the legality of the Governor's actions – those matters were handled separately, and privately).¹⁵ On the first day six witnesses were heard. Martin Wilson, the under-gaoler, was the first. His evidence covered not only what he had observed but also his recollection of what other men had said or done. Because of his senior position in the gaol administration he only occasionally had personal contact with Joseph Sudds. Wilson said the prisoner first complained to him of illness in early October, about two weeks after being arrested. He did not know if Sudds was

¹⁵ The following account is drawn from the Executive Council extract which accompanies the governor's despatch in *HRA*, series I, volume XII, Darling to Bathurst, 12 December 1826, pp.741 – 749.

treated by the Surgeon, and heard nothing more of the matter until after the trial on 8 November. Then Sudds complained to him again, allegedly saying 'that he thought it was his old Complaint, the Dropsy.' He spent three or four days in the Gaol Hospital and was discharged. Wilson said that several days afterwards Sudds complained to John Toole, the First Turnkey, of being unwell. Wilson again saw him and allowed him to be returned to the Hospital where he was examined the same day by James MacIntyre. Wilson claimed that John Thompson, the Medical Attendant, had reportedly said MacIntyre had found nothing wrong with Sudds and ordered him to be put in irons. He remained in irons in the hospital until 22 November when, at about 10.30 am, the irons were removed and Wilson took him to the barracks for the ceremony.

Wilson's evidence was credible when it dealt with events he had been part of. On the day of the ceremony he had taken Sudds downstairs from his cell, and claimed that Sudds had 'put his hand on Thompson's shoulder'¹⁶, and did not complain when marching to and from the barracks. Wilson's evidence confirms 'Quinque's' assertion that Sudds needed assistance to walk downstairs, but not that he had required men to help him on the return from the Parade Ground. Wilson said Sudds complained of being ill the following day (Thursday) at about mid-day or one o'clock. He was again taken to the hospital and his irons, put on during the ceremony, were removed. Wilson saw him again in the hospital but did not talk to him.

Martin Wilson's testimony was contradicted in some points by the next two witnesses, John Toole and John Thompson themselves. Toole stated that Sudds was taken ill only 'a few days' before his 8 November trial - 'He was swelled very much from his Head to his feet. He was bled and received opening Medicine.' Sudds reported ill again after his trial and was admitted to the Gaol Hospital, but discharged by both the Principal Surgeon, James Bowman, and the Assistant Surgeon, James MacIntyre. Again ill he returned to the Hospital for two

¹⁶ Presumably Patrick Thompson.

days. On the 22nd his irons were taken off and he marched to the Barracks - 'He seemed low spirited and unwell.' The next day he returned to the hospital and, at about 4 pm, Toole removed the new irons.

When John Thompson was questioned he also said Sudds was ill in early November and, as an out-patient, bled and given opening medicine. He complained of a sore throat and had difficulty breathing. Some days later, on the 15th, Sudds was admitted to the hospital at about 9 pm and was very unwell - 'He was much swollen. He complained of his Head and Bowels.' Thompson treated him the next morning by getting him to 'foment his Belly ... with Hot Water.' This 'removed the pain and swelling from his belly, but the swelling of his Legs and Thighs still continued.' The surgeon saw him late in the morning and ordered him to be discharged. Thompson claimed that Sudds had said 'he supposed it to be Dropsy, the same complaint he formerly had an attack of in the West Indies.' Sudds returned to the hospital some days later, 'in a much worse state than he formerly was.' On being readmitted he complained 'My Belly is like a drum'. The prisoner remained in the hospital, without being treated by either surgeon, until the morning of Wednesday 22 when his 'Jail Irons' were removed and he went to the barracks. The next day he returned to the hospital 'between 12 and 2'. He was seen by MacIntyre who ordered Toole to remove his new irons. Thompson asserted that Toole said 'the Irons had been put on by direction of the Government, and he could not remove them.' However, about 4 pm, after MacIntyre had left, the irons were taken off. Sudds ate nothing after Friday, and on Saturday could only be spoon-fed water. On Sunday afternoon he was taken to the General Hospital. Thompson said that from the time Sudds came to the Gaol Hospital, in early November, he ate very little but had 'an incessant desire to drink.'

If Toole and Thompson were correct, and their evidence offers close personal contact with the prisoner, Sudds was first taken ill in early November and not early October, as Wilson had claimed. If Sudds was ill in early November

he may have been a victim, not of dropsy alone, if indeed he was suffering from that, but of the epidemic which swept through Sydney.

In his evidence Assistant Surgeon MacIntyre said he had seen Sudds on 11 November, when he had swelling in the legs. Given medicine he was placed in the prison hospital, until being discharged on the 16th - 'I did not think there was anything the matter with him'. Although Sudds had returned to the hospital before the ceremony MacIntyre said he had 'not heard' that he had been ill again. MacIntyre had made a mistake in his dates when had written in his Report to the governor that he had seen Sudds on 24 November, and not the 23rd. He made the same error in his evidence, for clearly he had examined Sudds on the day after the ceremony (the 23rd). When MacIntyre now treated Sudds, a week after finding nothing wrong with him and ordering him to be discharged from Hospital, he diagnosed dropsy - 'from the Symptoms I observed, I imagined he might be affected with the Dropsy'. Having previously ordered Sudds to be placed in irons while a hospital patient, MacIntyre ordered the new irons removed. Sudds's legs were swollen and he was given medicine. MacIntyre did not see, or treat, the sick man on Saturday. On Sunday morning Sudds was delirious, and MacIntyre had him admitted to the General Hospital.

After Sudds's death MacIntyre stated that he had performed a post-mortem and made a report -

On opening the Body, I first examined the abdomen, which appeared quite healthy. I then examined the Liver, which seemed to me larger than in general; it was healthy in all other respects. I then examined the Head and found the Brain quite healthy. I then examined the Throat, and discovered a Mucus of a slimy frothy description.

The surgeon and the prisoner had talked and MacIntyre had chided him for bringing such disgrace upon himself, 'You will be a fine figure with those Irons at work. He replied "I will never work in Irons."' MacIntyre retorted that 'it would be better for you to be out of the world. Sudds replied, "He wished to God he

was.” Understandably when MacIntyre spoke to Sudds the next day (Friday) he was ‘low’, and ‘his Spirits were depressed’.

The Assistant Surgeon’s evidence should have been important for establishing from what Sudds had died. As Darling had already reported to Robert Hay on 4 December, MacIntyre had twice spoken to both him and Alexander Macleay after Sudds’s death, and referred to ‘an inflammation of the Chest and Throat’. The finding was not included in his Report, and Darling believed it had been kept out through the wishes of James Bowman in order to make trouble for the Governor in London.¹⁷ The detail of mucus in Sudds’s throat, of which MacIntyre told the Inquiry, was a further detail which had not been mentioned in his Report.

A finding that Sudds had died of bronchitis would have relieved Darling of any responsibility for killing the man through his ill-treatment. During the Inquiry it becomes clear that ‘inflammation’ was a synonym for bronchitis. MacIntyre was questioned about possible bronchitis, and asked if it had been left out of his report on the advice of James Bowman. He denied the allegation, stating that at Government House it had been requested he should add bronchitis to his report. Bowman had advised him to be cautious, and write nothing he could not swear to, ‘I, therefore, considered I should not be justified in using the term Inflammation.’ The discrepancy between what MacIntyre had told the Governor and Colonial Secretary and his final report was pointed out to him. MacIntyre agreed there was discrepancy, ‘but observed that this proceeded from a desire on his part to avoid committing any particulars to writing, which he could not verify on oath.’

In his medical report MacIntyre had claimed Sudds was admitted to hospital on 11 November, that he remained there until discharged on 16 November ‘apparently well’, and was readmitted on 24 November. The first date was disputed by John Thompson’s evidence, and MacIntyre was unaware that Sudds was readmitted to the hospital after 16 November and that he had remained

¹⁷ Darling to Hay, 4 December 1826, *HRA*, series I, volume XII, pp.730 – 731.

there until the morning of the 22nd. MacIntyre had also claimed that when again admitted to hospital on 24 November (a mistake for 23rd) Sudds's irons were 'immediately' removed – which was not exactly true. To the Council MacIntyre had said that he treated Sudds for dropsy, but had made no reference to this in his earlier Report where his conclusion had been inconclusive - 'After a minute dissection of the body, no apparent disease was found to exist to account for his immediate death.'¹⁸ If it was now being claimed that Sudds had been painfully inflated with dropsy, yet it had not been so evident when MacIntyre performed the post-mortem.

The Principal Surgeon James Bowman followed MacIntyre, and the account of his evidence was limited to a brief statement which moved from direct to indirect speech - 'I saw Sudds in the Jail, and was informed by Mr MacIntyre that he was being treated for a slight affection of Dropsy, "Anasarca"¹⁹; that he did not see him again, until he was removed to the General Hospital on the evening of the 26th of November.' The information Bowman gave of the illness Sudds was being treated for by MacIntyre was more precise than it had been in the evidence of the Assistant Surgeon himself. Thompson's evidence had not mentioned that either surgeon had treated Sudds for dropsy. Seemingly, Bowman was not questioned further about matters touched on during the previous testimony by MacIntyre. Neither his responsibilities as Principal Surgeon, nor the management and record keeping of the hospital, or his advice to MacIntyre not to add bronchitis to his medical report were questioned.

The last witness on the first the day was Captain William Dumaresq who, as the Acting Civil Engineer, had had the chains made. As his brother recorded his evidence, the Captain stated that Sudds and Thompson had not been measured for the irons, which weighed 13lb 12oz, 'and there was nothing in their construction

¹⁸ 'Report on the Case of Joseph Sudds's in Darling to Bathurst, 4 December 1826, *HRA*, series I, volume XII, p.731.

¹⁹ Anasarca, 'a generalized accumulation of serious fluid within the subcutaneous connective tissue resulting in oedema': *Collins English Dictionary*.

to prevent the person wearing them from lying in any posture.’ His claims were proved when the Inquiry re-commenced on Saturday. A soldier from the 57th Regiment with a similar build to Sudds, Jesse Greer, had the chains fitted on him – the actual chains were those worn by Patrick Thompson, for after breaking the links on his chains he had been fitted with those of the dead man.

On Saturday morning James MacIntyre was recalled and Alexander Macleay gave his evidence. MacIntyre had probably spent an uneasy night, and received an embarrassing interrogatory. He had been asked to return with the Hospital books in order to establish when Sudds had been in hospital and when discharged, and of ‘the progress of his disease, and other Circumstances Connected with the Case.’ Every person connected with the Inquiry already knew the answer to those questions. MacIntyre was forced to state that no records were kept. When asked to produce the notes of Sudds’s dissection, he admitted there were none. His answers were carefully entered into the Executive Council minutes.

The claimed difference between MacIntyre’s written report and what he had told the Governor and the Colonial Secretary was again highlighted and to underline the matter’s importance Alexander Macleay was allowed to make a deposition as to what he recalled of the conversation. He said MacIntyre had told them that when he first treated Sudds the latter had said that ‘he would never go to a Penal Settlement.’ MacIntyre had discussed the autopsy on Sudds and told them he had

Observed an inflammation or inflammatory appearance extending from the Chest upwards to the Throat, where it was more extensive, and which, he observed, was termed Bronchitis, and also that Sudds’s legs were swollen.

And, in consequence of its being strongly recommended by the Governor and myself to Mr MacIntyre, that he should be particular in his Statements, as it was required he should put them in writing, Mr MacIntyre said that he had been very particular in his

observations on Sudds's Case, knowing it was a subject, which the "*Rascally News Papers*" would take up.²⁰

The matter was important to the Governor and later, on 15 December, Macleay had his deposition sworn before Francis Rossi the Superintendent of Police.

The Inquiry conclusions answered the newspaper criticisms, and absolved the governor, but did not thoroughly examine the available evidence. It readily accepted that Sudds had been suffering from dropsy and this seems to have been the opinion within Government House.²¹ The Inquiry's conclusion summarised the evidence taken. It accepted - perhaps mistakenly for the matter was contradicted by two witnesses - that Sudds became ill fourteen days after being sent to gaol. It asserted that he walked (being neither marched nor assisted) to and from the ceremony - and yet Martin Wilson, who accompanied Sudds, had said that he had marched him to the Barracks. The Inquiry cleared the Governor of the intention to mistreat a sick man by stating 'That no Report was made by the Surgeon to the Government at any time of Sudds's illness, nor was it known until after his decease.' The Inquiry endorsed the Governor's version of the chains - 'That they were evidently intended to produce an effect on those, who were to witness the Ceremony, and not to subject the Prisoner to any extraordinary punishment.' The conclusion denied the chains prevented their wearer stretching out. If this were untrue, it was not denied by Forbes at the time. Attention was drawn to the discrepancies in MacIntyre's accounts but he was absolved of any 'improper motive' and his inconsistencies attributed to confused memory and the lack of proper records to which he could have referred. Incompetence killed Sudds, and perhaps a contagion carried from Ceylon. The conclusion was perhaps careless in points that were considered of minor importance, but generally an honest summing up of the evidence heard.

On Tuesday 12 December the minutes of the Executive Council Inquiry, and its finding, were prepared for despatch to Earl Bathurst. Darling claimed to

²⁰ Evidence of Alexander Macleay to the Executive Council, *HRA*, series I, volume XII, p.747.

²¹ This matter is examined in the following chapter.

have brought the matter before the Council to provide the home government with 'authentic information of every circumstance' around the death of Sudds. The summary of the events Darling offered Bathurst was, in some points confused. His main aim was to make it clear that his own conduct was free from censure: 'Sudds's death can in no respect be attributed to the proceedings which took place.'

Evidence heard during the Inquiry failed to establish when Sudds was sick and when he was treated in the prison hospital. Darling took little care to sort out the detail of Sudds's health and medical treatment. He said Sudds had claimed to have 'formerly suffered from dropsy'. Accepting the man was suffering from dropsy, and the obvious fact that the gaol administration was inefficient and careless, the finer points may have seemed of little importance. However, if the Sydney epidemic killed Sudds that chronology of illness was vital. Choosing words to describe Sudds's health Darling made a distinction between 'unwell' and 'ill'. Sudds, he said, was 'unwell' when gaoled, then 'ill' fourteen days later when he was hospitalised.

Darling insisted that his chains had not killed Sudds. He said the prisoner was marched to the barracks, had the chains applied, and returned to the gaol and that 'it was proved by actual experiment that Sudds could not have sustained any injury from them.' Blame was levelled at the prison hospital: 'It cannot be disputed that the mode of conducting the Jail Hospital has been extremely defective and reprehensible.' Considering the evidence, Darling approved that of John Thompson, because he lived in the hospital, had the closest contact with the prisoners, and also prepared and gave the medicines. Darling pointed out that his evidence differed strongly from MacIntyre's.

Darling noted that neither Bowman or MacIntyre had reported on Sudds's illness, 'consequently the Government had no reason to suppose he was unwell.' Neither had MacIntyre seen Sudds for the five days before the ceremony – although part of that time he spent in hospital. Darling responded in his usual

manner - 'I shall immediately appoint a Board to enquire into the management and System of the Hospitals generally, in order to their being placed on a proper footing.; and I shall have the honor of communicating the result for Your Lordship's information.'

Darling had responded to the death of Sudds by calling for a medical report, and holding an Executive Council Inquiry. Given problems to resolve, he sought bureaucratic solutions. He needed facts to make decisions, his government depended on boards and inquiries. To clear himself of blame he assembled the facts. Even as the Executive Council was meeting on Friday, D'Arcy Wentworth was being appointed to a new board to investigate the rate and allowances of provisions and supplies which should be supplied to the convict servants of private settlers.²²

Francis Forbes later claimed the Inquiry was held to clear the governor of blame. Darling wanted three points resolved by the Executive Council: Did the ceremony contribute to Sudds's death? Did the chains torture? Was the government informed of Sudds's state of health? He obtained negative responses to all three questions. To Forbes they may, later, have appeared as just ways of whitewashing the governor, but at the time they were important questions to be answered. Another point, was to clarify whether MacIntyre's post-mortem findings were tampered with for political ends. The discussion of this was inconclusive.

Dealing with these issues the men of the Executive Council became their own historians, they interrogated the sources and assembled a narrative to discover what had really happened (instinctive precursors of Ranke's '*wie es eigentlich*'). Unlike real historians they lacked hindsight. They asked a limited range of questions to find answers to accusations already made, they may not have realised that their Inquiry would become grounds for further accusations. In forcing bronchitis into the record, Macleay and Darling placed on view a possible

²² 8 December 1826, D'Arcy Wentworth Correspondence, ML A 754-1, p.263.

reason for Sudds's death. It had arisen in conversation with MacIntyre soon after the event, before 1 December, and before the whole topic was saturated with newspaper speculation. Death by bronchitis would have answered any allegations of brutality on Darling's part. It had not been in MacIntyre's Report and Darling and Macleay ensured it was restored to the official record – and hinted that its dismissal by the medical men had political connotations. The Executive Council Inquiry was an attempt to discover, and explain, what had happened. The confusion over Sudds's medical treatment absolved the governor of setting out to torture a sick man, but the Inquiry did not consider the legalities of the case and these were being privately worried over by the Governor.²³

Neither all the right questions were asked, nor all the right people questioned. The famous five, Quinque, had offered to swear an oath to what they had seen. As, presumably, prisoners in the Gaol, and companions of the two men, they could have provided useful evidence. Patrick Thompson himself was not questioned during the Inquiry. Only on 23 April 1827 was he interrogated on board the *Phoenix* hulk by Alexander McLeay, William Moore and William Wentworth. When questioned Thompson placed Sudds's earliest illness at the beginning of November. He recalled that Sudds had been taken from the hospital to the sessions on 6 November²⁴ and then appeared ill, 'insomuch that the man who was handcuffed with him was obliged to sit down on the grass in the courtyard in order to enable him to lie down. He continued in that way till after his trial.' When Sudds was again unwell after his trial Thompson thought that the illness was 'in his bowels.' That Sudds was suffering from dropsy came to be accepted in most accounts but Thompson said: 'I never heard him say he had the dropsy in the West Indies.'

²³ And will be discussed in the following chapter.

²⁴ The Quarter Sessions were held from 6 – 9 November. Although their trial was held on 8 November they had presumably attended at the court on each of the preceding days. See the Certificate of Conviction of J. Sudds and P. Thompson, *HRA*, series I, volume XIV, p.617.

Thompson's answers did not represent Sudds as being obviously sick during the ceremony, although he had probably had no contact with him in the week before while Sudds was in the gaol hospital. Thompson's comment on the swelling of Sudds's legs was what he had been told, not what he had seen:

I do not know that his neck was swollen beyond its ordinary size; he was naturally a thick-necked man; but I do know that his ankles were swollen after his return to the gaol; I think the swelling arose from the marching; I heard of his having had a swelling in his legs about six or seven days before the chains were put on him.²⁵

Patrick Thompson was irrelevant to the controversy he and Sudds had aroused. The case against Darling did not need him, or his evidence. None of the protesters was interested in either of the two men, except as names with which to attack Darling. Without Sudds's death the parade ground ceremony would have been a minor, and generally approved incident. The dead Sudds was a figure of greater importance than when he was alive. Thompson was sent to Parramatta on the night of Tuesday 5 December, while the *Australian* was preparing its attack on the Governor. It was possible for the paper to have spoken with him before and gained his evidence. But no attempt seems to have been made to talk with him. Later the paper carried further news of his adventures, claiming he was worked in his chains, and sent by cart to the convict establishment at Emu Plains.²⁶

On the Friday the inquiry began Laurence Halloran wrote to Darling complaining of conditions in the prison. His 'Quinque' letter had been published on Wednesday, and after that bitterness he sugared this letter with sweet words: 'I do so with perfect confidence that, under Your Excellency's Administration, the proof of an existing abuse will insure its immediate correction.'²⁷ Darling acted on his complaints calling an investigation into the prison, which provoked a

²⁵ The examination of Patrick Thompson, enclosure in Darling to Murray, 28 May 1829, *HRA*, series I, volume XIV, pp.860 – 863.

²⁶ *Australian*, 9 December 1826

²⁷ Halloran to Darling, 8 December 1826, *HRA*, series I, volume XIII, pp.171 – 172.

breach between himself and the Sheriff, and further soured his relations with the Chief Justice. In one week Halloran created two memorable controversies.

As the Executive Council was meeting on the second day of its Inquiry the *Sydney Gazette* and the *Australian* were publishing allegations and counter-allegations that had little to do with the evidence the councillors were hearing. The *Sydney Gazette* attacked 'Quinque's' letter as 'fictitious correspondence', written by Wardell - 'concocted within his own dominions'. Both 'Quinque' and the earlier communication dealing with Sudds's death had been 'got up by the same learned hands. We may mistake, but we are pretty well satisfied *our* information is tolerably correct on this point.' The jibe 'learned hands' could have pointed towards Dr. Laurence Halloran but the paper went further to indicate that Wardell was their target. 'Quinque' had offered to swear an oath to the statements they made and Howe's paper suggested what would happen if this was acted upon - 'It would be amusing to see the Doctor *verifying his own statement by oath!!!*'. The correspondence had been created, the *Gazette* contended, to allow Wardell to continue commenting on 'so dry a topic' while continuing to pass himself off as 'a friend of the Administration'.²⁸ Howe was doubly misinformed. 'Quinque' was his old contributor Laurence Halloran, and by then no one at Government House saw Wardell as a friend.

The *Sydney Gazette* had advertised the sailing of the *Corsair*, and the paper objected to the *Australian's* accusations that it had been kept secret. It also made the point that the sailing advice had been listed every morning in the Master Attendant's Office. Also that day, the *Gazette* published an extract from the *Public Ledger of Newfoundland* extolling Chief Justice Forbes, who had previously served there.²⁹ As the Governor was being demonised the Chief Justice was being praised.

²⁸ *Sydney Gazette*, 9 December 1826.

²⁹ *Ibid.*, extract from the *Public Ledger of Newfoundland*.

Aspinall and Brown, the *Corsair's* shipping agents, defended themselves. In a letter to the *Australian* they denied its claims, and again pointed out that the sailing had been advertised in Saturday's *Sydney Gazette*. Wardell ignored their protest. He claimed that only two or three people had been aware of the vessel's departure, and that they had ensured no one else was advised. In adverting to the subject the *Australian* invented its facts and belittled the Governor:

One subject was "awake", as the saying is. He relied upon the newspapers, and would not throw a chance away. He got his despatches and his budget ready for sea, after three days and three nights of incessant writing. We don't know how long a minute description of "the chains" occupied his pen; but we doubt not they were fully expatiated upon, and most minutely depicted!³⁰

The Case polarised critical attitudes towards the Governor. If Darling believed Macleay's letter of explanation would calm local concerns, and that an Inquiry would appease his superiors in London, he was wrong. The Case was developing in oppositionist directions which, to be credible, depended on an image of Darling as an autocratic, and deceitful, plenipotentiary. Several lines in the *Australian* capture the evolving situation. On 6 December Robert Wardell had written angrily, and inaccurately, of the allegedly secret departure of the *Corsair*. In his next issue he proposed that this anger was shared, and obliquely indicated another influential and irritated colonist - 'But the ship has gone, and we know whom, her "being off", has struck with dismay!'³¹ In the light of what was to follow Wardell's un-named colonist seems to indicate William Wentworth. If this was also the reading of contemporaries it suggests an expectation on the part of the *Australian's* readers that in a critical moment Wentworth would be the man to attack the local government. It was not the quarter from which Darling had expected to be struck, for him John Macarthur and his friends had seemed the greatest probable menace and Wentworth, since January, had done little in public to oppose him. Representing shock at the deceit practised in keeping the sailing

³⁰ *Australian*, 9 December 1826.

³¹ *Ibid.*

secret, the *Australian* was also suggesting, in the word 'dismay', that an opportunity for forwarding a criticism of the governor had been missed by its unnamed character. In this fluid situation of grievance and malice the *Australian* was both representing and forming opposition towards the Darling government. The feelings of the person dismayed may have arisen from reading the newspaper's accusations of the Governor's duplicity - keeping the ship sailing secret so that his side of the events would be the first to arrive in London. The Case of Joseph Sudds and Patrick Thompson began to seem something being argued over for political ends that had little to do with the death of a thieving soldier.

Chapter Fifteen

Political tensions, threatened impeachment

Inside their meeting room the Executive Council Inquiry had privately sorted and arranged the facts of Sudds and Thompson, outside those details were being publicly distorted. Darling was clearing himself from blame, as the ineptness of the Gaol administration was being demonstrated. Left unresolved was whether the Quarter Sessions had exceeded its authority in condemning Sudds and Thompson to transportation, and whether the Governor acted illegally in altering that sentence. When legal opinions were obtained they were either unclear or accusatory – and raised more questions than they answered.

So close to the actual events imaginary elements were being added to the story of Sudds and Thompson, and essentials deliberately confused. On 13 December the *Australian* presented a description of Sudds, which had nothing in common with its earlier reporting.¹ The heat during the parade ground ceremony was inflated in this new account. On 22 November the thermometer at noon had reached 74°F, now it was described as ‘almost tropical’. Sudds’s health deteriorated and his body was puffed up to suit a fiction the newspaper was writing. During the Executive Council Inquiry Surgeon Bowman claimed Sudds had been treated by his subordinate for anasarca.² Wardell introduced an original diagnosis, stating that Sudds had been suffering from an infectious skin disease, erysipelas³, and the symptoms of advanced dropsy -

the noon-tide-heat of an almost tropical sun, is an antidote to erysipelas – that a man, who was not only disfigured – but disguised with swollen members, who was in short, a mass of tumour from

¹ *Australian*, 13 December 1826.

² As previously noted, Anasarca is ‘a generalized accumulation of serous fluid within the subcutaneous connective tissue resulting in oedema’, *Collins English Dictionary*.

³ Erysipelas, ‘an acute streptococcal infectious disease of the skin, characterised by fever, headache, vomiting, and purplish raised lesions, esp. on the face. Also called Saint Anthony’s fire’, *Collins English Dictionary*.

head to foot; whose limbs were twice the ordinary size, and who was sensibly approaching to his last mortal struggle.

Having created their patient the paper spoke of his special treatment, ironically postulating that the government thought he would 'feel permanently good effects, by being neck and heels enclosed in iron shackles, and smothered up in linseywoolsy!' Choosing words to mock, and hurt, Wardell blamed his recent friends for 'gross misrepresentations', and charged the government with 'the most unmanly perversions of truth over the matter'. Almost a fortnight before his journal had praised Alexander Macleay's letter of explanation as 'manly', now its antithesis was thrown at the soldiers in Government House. Wardell's use of ink was resented, and remembered, by his targets.

Eliza Darling may have read those comments in that morning's *Australian* when she wrote to her brother Edward and mentioned the case. Mirroring the thoughts of her husband and brothers, she claimed Sudds was only the pretext for the confrontation taking place. In suggesting motives for the dispute, Eliza recognized political and personal reasons, the government despatches recorded only the former - 'a certain Party *means* to make *use* of it, in *every possible* manner to get rid of the Governor. *Here, everything* seems to be judged either by *party* feelings or *private* feelings ...'⁴

With the Sudds-Thompson Case the Governor faced new enemies. Until early December 1826, Robert Wardell and William Wentworth had not publicly worked to oppose his administration. Their political opinions were well known, but they were not active opponents, and they may have been held in check by friendly relations with members of the administration. The break was sudden. In November, when Governor Darling wrote to London about the enmity between Saxe Bannister and Robert Wardell, he selected words such as 'rancour' and 'vindictive feelings' to capture the intensity of ill feeling between the two men. He accounted for this by explaining that they had been good friends who had

⁴ Eliza Darling to Edward Dumaresq, 13 December 1826, AOT NS 953/309.

fallen out.⁵ A similar narrative of broken friendship and ensuing bitterness was developing between Government House and Robert Wardell.

The newspaper reports, and the Governor's despatches, show little compassion for Joseph Sudds. The horse, whose mistreatment Robert Howe had complained of, attracted more sympathy. In that case a free settler, Patrick Keefe, appeared in court on 13 December charged with cruelty.⁶ He was found guilty - 'at one time the poor animal's head was completely enveloped in flame.' Captain Rossi, the magistrate, gave him a severe reprimand and fined him £5, or three months gaol. Keefe was unable to pay and was sent to prison. The case of Sudds inflamed passions, but perhaps concern over the suffering horse was more truly felt.

Darling worried about the legal aspects of Sudds and Thompson and asked W.H. Moore to provide an opinion. On 2 December the Acting Attorney General had submitted his response - too late, Darling claimed, for it to be considered and sent on the *Corsair*. Moore discussed the role of the court, whose actions were governed by Clauses 4 and 5 of *Act No.5, 7 Geo. IV.*, but hardly touched on Clause 6 which covered the Governor's conduct.

Moore's opinion demanded careful study, for it seemed even more convoluted than the matter it was supposed to be clarifying. In dealing with the courts he discussed the treatment applicable to transportees and second offenders, but not of first offenders such as Sudds and Thompson. Even more useless, from the Governor's point of view, was Moore's discussion of the Governor's rights of withdrawing prisoners. The opinion did not attempt to explore the meaning of the clause, or indicate whether or not Darling had the right to change court sentences passed on prisoners before they arrived at their place of transportation. Moore simply, and unhelpfully, transcribed the original Act - although where it read 'now or hereafter to be transported' he changed the wording to 'already or

⁵ Darling to Bathurst, 1 November 1826, *HRA*, series I, volume XII, p.668.

⁶ *Sydney Gazette*, 13 December 1826.

thereafter to be transported'.⁷ The reason he did not clarify the Governor's position may have been that he considered it too clear to need further explanation. When Darling subsequently asked him to give his opinion on the powers of the governor under the Act, he replied without ambiguity – 'I take this clearly to mean also that the Governor may by order, etc., with-hold any Person, sentenced to be transported to a Penal Settlement and to employ him in like manner.'⁸

Again, Wednesday 6 December was a day of intense activity. That day the *Australian* had irrevocably turned against the Darling administration and Quinque's letter had been published. That day also Darling passed Moore's exercise to the Chief Justice. In a personal note to Forbes, Darling asked him to examine it during the day, and suggested they discuss it that night after Forbes had dined at Government House.⁹ Perhaps Forbes did not keep the dinner engagement, or the attitude of that morning's *Australian* made it all seem more urgent, for he immediately sent the Governor a memorandum. Forbes claimed the court had acted correctly in passing a sentence of transportation but confessed to 'a doubt' [emphasis in original] whether the governor could 'withdraw' a prisoner until he had physically been removed to a penal colony and there committed a further act of misconduct which merited additional punishment.¹⁰ The Chief Justice's doubts questioned whether Darling had acted lawfully in changing the Quarter Sessions sentence.

The Governor and the Chief Justice may have had further discussions because on the following day Darling sent Forbes another note – 'My dear Judge, If you can come up here just now without inconvenience, I shall be delighted to see You – Yr Sincl R. Darling'.¹¹ Although friendly and courteous this note, if a typical communication between Governor and Chief Justice, would have been

⁷ Darling to Bathurst, 15 December 1826, *HRA*, series I, volume XII, pp.753-755.

⁸ 'Opinion by Acting Attorney-General Moore', 15 December 1826, *HRA*, series I, volume XII, p759.

⁹ Private note from Darling to Forbes, 6 December 1826, Ralph Darling Letters, ML Ad 27.

¹⁰ Memorandum from Forbes to Darling, 6 December 1826, Ralph Darling Letters, ML Ad 27.

¹¹ Darling to Forbes, 7 December (no year), Autograph Letters of Public Men, ML A 68.

irksome to the punctilious judge both for the abbreviated style in which it was written,¹² and Darling's assumption that he could so easily summon the Chief Justice.

Aware of Forbes's reading of the Act, Darling requested a formal opinion, from both Supreme Court judges, Forbes and John Stephen. When they complied the judges proposed that the local Act allowed the courts:

to award imprisonment and hard labor on the roads, but with this proviso that, for a first offence, such hard labour should be within prison walls only; the Court, however may still transport in its discretion, agreeably to the Laws of England, which are not altered or repealed by the Ordinance.

But the matter was not so clear, for Clause 5 limited the sentencing powers of the court when dealing with first offenders. It did not allow their transportation 'in its discretion'. The two judges directed attention to the matter of hard labour, and where it could be carried out by first offenders. Clause 5 linked 'imprisonment and hard labour' of first offenders, it specified that they could be imprisoned and worked 'within prison walls only'. The judges broke the link, and read the Clause as if it dealt only with the manner in which first offenders could be worked.

The judges' opinion appears flawed, for it could be argued that the Quarter Sessions erred in sentencing Sudds and Thompson (first offenders) to transportation, and that the local statute and English law were in conflict. If this argument is accepted, then Francis Forbes was at fault. Under the 1823 Act, the Chief Justice was responsible for considering all draft laws prepared by the Legislative Council, and certifying 'that such proposed Law is not repugnant to the Laws of England, but is consistent with such Laws, so far as the Circumstances of the said Colony will admit.'¹³ The *Australian* had suggested such an anomaly when it said the Act gave Darling more power than the King.¹⁴ Either the colonial clause was valid, and the sentence of first offenders to transportation was not

¹² Another correspondent of Government House, James Busby, had noticed the same tendency in Henry Dumaresq – 'I had a note from Coll. Dumaresq (in his normal style) beginning "My Dr. Sir"': James Busby to George Busby, 2 March 1827, Letters by James Busby, 1823 – 1870, ML MSS 1668.

¹³ Clause XXIX, 4 *Geo. IV, Cap. XCVI* in *HRA*, series IV, volume I, p.663.

¹⁴ *Australian*, 29 November 1826.

permitted, or it conflicted with English law and Forbes had erroneously certified it to be passed by the Legislative Council. These possibilities were not discussed in the two judges' opinion. In effect they shielded their courts, and the Chief Justice, from blame – they reserved that for the Governor alone.

Dealing with Clause 6, the judges' interpreted this as allowing the Governor 'to withdraw persons, transported to penal settlements.' They proposed that Darling had the power to transfer convicted felons only when they were at the place of transportation. The wording of the clause may be ambiguous - 'to withdraw any person or persons now or hereafter to be transported or sent to any Penal Settlement' – but the judges' opinion did not recognize any possibility of ambiguity.¹⁵ Their opinion did not explore the complexities of the clause's wording. In justifying their reading they interposed the intentions of the men who framed the Act. It was, they contended, to allow the governor to withdraw prisoners from the penal settlements to 'mitigate' the sentences of well behaved prisoners or to place them under a more severe regime. This was an odd summation given Forbes's earlier belief, expressed only some days earlier, that it had been enacted to inflict 'additional punishment'. If it had been drawn up for the reason they now gave, Darling would have known this, for it had been, most likely, prepared at his request. If the intention of the Act was to give him powers only over already transported convicts, he would not have imagined it gave him the power to divert prisoners before they were landed in the penal settlements.

The original error lay in the sentence of transportation passed on two first offenders by the Quarter Sessions, but the Forbes-Stephen opinion indicted the Governor alone. In private Forbes was blunt, and his language clear. He divorced himself from any responsibility in the matter, and blamed Darling, when he informed Wilmot Horton: 'The Governor has lately fallen into an error, which I feel will give you some trouble.' For his influential friend he explained that

¹⁵ Darling to Bathurst, 15 December 1826, *HRA*, series I, volume XII, pp.755 –756. And if the matter really is as clear as the judges believed, was it obvious to readers when this clause was given to them (beside the Governor's action), in the previous chapter?

a power was given him [the governor] of withdrawing prisoners from the penal settlements ... The Governor, however read the Act as giving him a power to change transportation immediately into labor in irons on the roads, and had ordered many persons to be so worked, who were under sentence, but never transported.¹⁶

The Chief Justice was aware that Sudds and Thompson were not the only prisoners whose sentences had been changed from transportation to hard labour in the road gangs since the passing of the Act in August – but he had not previously complained of any irregularity in the Governor's actions. After blaming Darling, Forbes assured his correspondent that nothing was 'done with a cruel intention.' With this letter the Chief Justice enclosed a copy of his (surely confidential) opinion given to Darling. Safe from the Governor's eyes Forbes added a postscript: 'Note this opinion was given after the case of Sudds had happened – the Governor does not appear to have had any doubts about the powers, until the occurrence of that case, and the question which was raised by it – F.F.'¹⁷

Historians have generally agreed with Forbes and Stephen's opinion of the Act. C.H. Currey saw special significance in the word 'withdraw' - 'His Excellency must have merely glanced at the section, for he entirely missed the significance of the material word "withdraw".'¹⁸ Currey was also critical of Darling for a supposed delay in asking advice of Forbes and John Stephen: 'Finding that gentleman's [Moore's] reply verbose and obscure, he then turned to the Judges, but not until then.'¹⁹ Currey may have been unaware of the notes which attest to informal discussions of the matter by the Governor and the Chief Justice, and also the offence which would have been given if Darling had asked the opinions of the Supreme Court judges before having received a reply from his Acting Attorney General. J.B. Hirst categorises Darling's actions as an 'illegality' and states that 'he [Darling] did not have the power to alter a sentence of

¹⁶ Forbes to Wilmot Horton, 15 December 1826 in Bennett, *Some Papers of Sir Francis Forbes*, pp.115 – 116.

¹⁷ Forbes to Wilmot Horton, 15 December 1826, ML A1819.

¹⁸ Currey, *Sir Francis Forbes*, p.194.

¹⁹ *Ibid.*

transportation immediately into a sentence to the chain gang.²⁰ Brian Fletcher recognized that the question of whether Darling acted illegally is 'debatable', while noting that the John Stephen and Francis Forbes view of the matter has been approved by 'more recent experts'.²¹

Brian Kercher, an Associate Professor in Law, asserted that Darling's action, in overruling the quarter sessions sentence, 'showed his autocratic tendency'.²² He also believed Darling intended to work the two men in 'especially heavy chains', yet the chains were not especially heavy and only intended to be worn during the ceremony. Legal historian Alex C. Castles used the case to demonstrate his assertion that 'special punishments might be devised which illustrated the arbitrariness still inherent in the operation of the convict system'.²³ These historians' accounts (with the exception of Brian Fletcher) have accepted Currey's narrative and made it a foundation for their own constructs. Historians who use the supposed illegality of Darling changing the quarter sessions sentence to show his autocratic nature, and the arbitrariness of the 'system', overlook his belief that he was acting in strict accordance with a local Act – and on the occasions before the death of Sudds, when he had acted in similar fashion, the Chief Justice had never pointed out any irregularity in his actions.

Contemporary opinion favoured Darling. W.H. Moore had read the Act as giving the Governor the right to alter the men's sentences before they were transported. That attitude, not that of Steven and Forbes, was supported by Sir Edward Sugden, the Solicitor General.²⁴ The Colonial Office applied for his opinion on 27 January 1830 and Sugden replied on 10 June. He found the

²⁰ Hirst, *Convict Society*, p.177.

²¹ Fletcher, *Ralph Darling*, p.247.

²² Kercher, *An Unruly Child*, p.35

²³ Alex C. Castles, *An Australian Legal History*, Law Book Company, Sydney, 1982, p.159.

²⁴ The middle initial of the signature on the source document is ambivalent – Edward, either R or B, Sugden (f.156). Brian Fletcher made use of the document and ascribed it to E.R. Sugden. However, the volume index (f.505) notes that the document came from the Solicitor General, and is thus attributable to Edward Burtenshaw Sugden (1781 – 1875). Sugden to Murray, 10 June 1830, CO 201/214 f151-156, 505; Fletcher, *Ralph Darling*, p.273; for Sugden's career see *Dictionary of National Biography*, and J.B. Atlay, *The Victorian Chancellors*, volume II (London, 1908), pp.1 – 52.

prosecution and conviction legal, and described as 'absurd' the notion that for the Governor to show clemency prisoners should be first subjected to the 'inconveniences and perils of actual transportation.' In asserting that the conviction was legal he did so in considering whether the soldiers, given that they had carried out the crime in order to escape the charge of desertion, had committed a felony. He found that they had committed a felony, but did not consider whether the Quarter Sessions had erred in sentencing first offenders to transportation. Where some critics, and historians, have maintained that Darling had not seen the significance of the word 'withdraw' before he changed the sentence of Sudds and Thompson, Sugden argued that the important word was hereafter – 'hereafter to be transported'. This, asserted Sugden, permitted Darling to use men currently in penal colonies or who were going to be sent there. While absolving the Governor of blame Sugden suggested that Darling acted incorrectly in mixing military and civil responsibilities and punishing Sudds and Thompson as soldiers.²⁵ Sugden was a writer on the law, later Lord St. Leonards and Lord Chancellor – and Francis Forbes had been his pupil.²⁶

The political tension in the colony was extreme, and there was a sense of urgency about what was taking place for the *Regalia* was due to sail on 20 December. Much had happened in the short time since the delayed departure of the *Corsair* on 5 December. Bathurst, Hay, and Wilmot Horton at the Colonial Office had all to be informed of the state of the colony by the Governor, and his belief that the Sudds-Thompson Case was being manipulated to offer the liberal colonists opportunities for influencing the approaching parliamentary debate over the New South Wales Bill.²⁷

²⁵ The *Monitor* made the point at the time that Darling punished Sudds and Thompson 'for the honour of his profession' – *Monitor*, 22 December 1826.

²⁶ Forbes stated that he had been the pupil of Sugden, who was three years his senior, in his 19 April 1809 Memorial to John Hodgson, Governor of Bermuda, in Bennett, *Some Papers of Sir Francis Forbes*, p.1. Currey gives the details for Sugden in his account of Forbes's legal training, referring to him as 'a celebrated Lord Chancellor', but does not refer to his conflicting opinion on the Sudds-Thompson Case. Currey, *Sir Francis Forbes*, pp.6 – 7. None of the modern legal histories cited made reference to Sugden's opinion.

²⁷ Darling to Bathurst, 15 December 1826, *HRA*, series I, volume XII, pp.751 – 752.

As the days passed towards the projected sailing Darling waited to be given a copy of Wentworth's impeachment for transmission to Downing Street. It never came.²⁸ When Darling used Moore to urge Wentworth to complete the impeachment document and forward it to him in time for the sailing of the *Regalia* he may well have been responsible for pushing its author to turn vague menaces into a reality – without Darling's interference Wentworth's threats may have remained only empty boasts and newspaper speculation.²⁹

On 15 December Wentworth, ignoring the Colonial Office instruction that all correspondence should be forwarded through the Governor, wrote directly to the Secretary of State urging Darling's impeachment.³⁰ Wentworth informed Lord Bathurst of the death of Sudds, of his charges against Darling, and made excuses that his communication was not better prepared. Wentworth said that as it was term time he had been too busy to prepare a proper statement and he asked the Secretary of State to hold off making a decision on Darling's behaviour until he sent a complete statement, through the Governor, 'by the next conveyance'. It was a promise he did not keep until March 1829.

Wentworth asserted that Sudds's death had created a 'universal feeling of horror among all classes except the immediate dependants of Governor Darling.' The punishment had been 'an evidently illegal punishment partaking of the character of torture'. Even if it were not so, claimed Wentworth, it 'is the prevalent opinion of the great majority of the people.' Assuring the Secretary of State that Darling would send him only copies of the supportive *Sydney Gazette* Wentworth sent copies of the *Australian* and *Monitor*. He informed Bathurst that although he had been a 'part proprietor' of the *Australian* he was no longer connected with it, and had not been so for over twelve months, and that he

²⁸ After revealing that they were aware he intended to send an official protest about Darling to England, the *Monitor* praised Wentworth for promising to transmit his complaint through the Governor. It had already been sent direct to the Secretary of State. *Monitor*, 29 December 1826.

²⁹ Darling to Murray, 28 May 1829, evidence of W.H. Moore to the Executive Council, *HRA*, series I, volume XIV, pp.891 – 892.

³⁰ Wentworth to Bathurst, 15 December 1826, CO201/179.

nether was, nor had been, 'for a much longer period a contributor directly or indirectly to the public papers of this Colony or of any other Country.'

Impeachment had been broached in general terms by the *Australian* on the day it reported Ralph Darling's appointment as governor on 5 May 1825, although without any special reference to the incoming incumbent:

Let the Governor of a Colony be impeached or brought to account for wrongs he may have committed, but let him be treated with the courtesy to which his official rank entitles him, and even if he have failings or were charged with follies, still let him be dismissed in a manner creditable to a great nation, not as if he were the chairman of a Pot-House Club.³¹

Wentworth's letter carried exaggerated assertions and little, if any, serious evidence of wrongdoing on the part of the Governor. On the day he dated his letter there still remained four clear days in which a serious document could have been prepared. His letter was unplanned, and did not even include his own version of events – for this he relied on the newspaper cuttings he was sending as an enclosure. Considering the gravity of what he was suggesting, the Governor's impeachment, it was a scrappy and unsatisfactory piece of work but it left the door open for a later charge to be formulated.

William Wentworth was concerned by his place in the world. He was a man of imagination, and impeachment was an exciting word, heavy with Whig tradition. If Darling was impeached it would ensure immortality for Wentworth, and his victim. Impeachment offered possibilities for grandstanding colonials to appear centre stage in Westminster. For a talented colonial lawyer it was an intriguing imperial fantasy. If successful his accusations would have to pass through the House of Commons to the House of Lords, and it would have taken him from Sydney to Westminster Hall, and a leading role in a trial before the lord high steward or the lord chancellor. Could Wentworth have imagined himself as a colonial Burke, pursuing his own Hastings before the House of Lords? William

³¹ *Australian*, 5 May 1825.

Wentworth was a daydreamer. He had confided his earlier dreams to his father, he would win a poetry prize, his book on the colony would gain him a place in a colonial legislature.³² Justice for Sudds was to be a stepping stone in the career of William Charles Wentworth, statesman. Like his other dreams this also dissolved.

Mention of Wentworth's intention to impeach the Governor was made in the *Sydney Gazette* on the day after his letter was written, and the paper artlessly reminded readers of Earl Bathurst's direction, advertised before the controversy about Sudds and Thompson had begun, that all letters to Downing Street must pass through the Governor.³³

A.C.V. Melbourne wrote that the Sudds-Thompson Case 'seemed to offer a point of attack upon which he [William Wentworth] poured out all his energy.'³⁴ What occurred was a remarkable lack of action on Wentworth's part. What had he done so far to oppose Darling? Archival records contain only this letter to Earl Bathurst. Darling obviously was hearing gossip of what William Wentworth was going to do, but he did very little – his reactions dissipated in talk. In December 1826 his open opposition to Darling was very new. The Sudds-Thompson Case had blown up in a matter of weeks – through the efforts of Robert Wardell and Laurence Halloran. Wentworth was unsure how to proceed. While Darling, and his intimates, were interpreting the continuing discussion and argumentation as a political element in the argument for constitutional reform, this may not how it was being seen by their opponents – to whom it may have been far more personal. Grievances involving Wardell and Halloran had provoked their initial spurts of fury directed against Ralph Darling, and these incidents had lit and fanned the conflict – anger at the death of Sudds, of not being believed, at the way the 'A Subscriber' letter had been used to influence public opinion, the supposed secrecy in the sailing of the *Corsair*. Two angry writers used fiery words,

³² William Wentworth to D'Arcy Wentworth, (seat on colonial legislature) 25 May 1818; (poetry prize) 18 March 1823: ML A 756.

³³ *Sydney Gazette*, 16 December 1826.

³⁴ Melbourne, *Early Constitutional Development*, p.133.

which drew in other men who were to use the Case for their own disputes with Darling.

If Wentworth was lax in preparing his mail to the Colonial Office, Darling was industriously completing his despatches. He sent the Secretary of State a fuller account of the Sudds and Thompson's punishment than that he had prepared earlier in the month, and with it he enclosed a copy of the Executive Council Inquiry. The Governor made a logical, and obvious, link between the newspaper ferment the death of Sudds had aroused and the campaign for British institutions – more personal reasons for the controversy he ignored. He interpreted the case as a means of getting public support for a public meeting and a petition appealing for constitutional change: 'It is very well understood that their object is to induce the People to unite in petitioning Parliament to extend their privileges by granting the Trial by Jury, a Legislative Assembly, and such other Institutions, as are recognised by the British Constitution.'³⁵ Going, once more, over the facts of the case Darling explained to Bathurst that the links in the special chains were no more than 'the dimensions of a *Common Dog Chain*.'³⁶

For Wilmot Horton, Darling drew attention to the possible political repercussions of the 'event' in London, and suggested that it could give the Under Secretary 'some trouble'. The phrase was the same as that chosen by Francis Forbes when writing to the same man - though Forbes had made the Governor, and his 'error', the source of the trouble. Darling emphasised that what had happened to Sudds and Thompson was not the real point at issue - 'the matter itself it is of no importance'. Darling disliked the *Monitor* and its editor. Although it was less abusive than the *Australian*, he called the *Monitor* 'violent in the extreme'. His attitude was tinged with personal dislike of E.S. Hall, and Darling represented that he was more dangerous than Robert Wardell, who was not mentioned by name. Darling saw the *Monitor* as a convict newspaper, and accused

³⁵ Darling to Bathurst, 15 December 1826, *HRA*, series I, volume XII, pp.751 - 752.

³⁶ *Ibid.*, p.751.

Hall of 'exerting himself to provoke the Troops and the Convicts to Mutiny and Insurrection.' His words were not meant to be taken lightly. The Governor revealed his intention to prosecute if Hall continued writing in a similar vein. However, the prosecution would be delayed until after it would be impossible for Hall to send petitions to England which might be used in the parliament when the New South Wales Bill was discussed. Darling had avoided attacking the press when asked to do so over personal disputes, but he would act against them for sedition or inflammatory writing. The Governor found this editor's motives hard to understand, and was unwilling to attach good faith to his actions. Hall was poor, a widower supporting eight children, and would be facing imprisonment if convicted: 'I must confess I am at a loss to discover his object.' Two of Hall's associates were named as William Walker, whom Darling identified as 'an expelled Wesleyan Missionary'³⁷, and the Catholic priest Father Therry. The written evidence is not enough to explain the Governor's dislike of Hall. There was probably much in his personality which he found objectionable. Not unreasonably, Darling pointed out that the privilege of a free press had been 'grossly abused'.

Darling told Wilmot Horton of Wentworth's intention to impeach him, and also of supposed threats that Wentworth was going to send copies of the case he was making to 'his *friends* in the House of Commons'. As the days passed and the Wentworth letter did not arrive at Government House Darling, not knowing that it was being sent direct to Earl Bathurst, worried that it was being withheld until the last minute, to prevent him answering the objections raised against his conduct. In a moment of intense stress Darling, or his Private Secretary (for the passage possesses some of Henry Dumaesq's flair) drew a pen portrait of Wentworth. This has sometimes been taken out of context to attack Darling by representing him as an aggressive snob, it was the reaction of a very worried man:

³⁷ William Walker had involved in the 'dinnerist crisis' and had appeared on John Macarthur's list of those who attended Brisbane's farewell dinner.

I should observe that, from the first, he has evinced a feeling of hostility, without my being able to discover any Cause. I had endeavoured to Conciliate him by Courtesy and attention; but he is a vulgar, ill bred fellow, utterly unconscious of the Common Civilities, due from one Gentleman to another. Besides, he aims at leading the Emancipists, and appears to have taken his stand in opposition to the Government. His return to England is now spoken of, in order too his Conducting their Cause in person.³⁸

Darling's position was uncertain. He believed the death of Sudds was incidental and accidental, but doubted that he was being fully supported by the law officers. He sent a copy of the Forbes-Stephen opinion to Bathurst and admitted to Wilmot Horton (and to Hay) his 'disappointment' with Forbes's view of the case. He made the pertinent criticism that Forbes was aware that prisoners sentenced to transportation had been withdrawn to work on the roads: 'Mr Forbes must have known that the Prisoners, instead of being transported according to their Sentence, have in general been sent to work on the Roads. I conclude, however, that he had not attended to the circumstance.' Forbes was aware of what was being done, as he had admitted to Wilmot Horton.³⁹

Forbes, at the Governor's request, had written a further undated memorandum on the case.⁴⁰ It justified the serious view Darling had taken of the incident and the dangers of representing 'the Condition of a Convict as superior to that of a Soldier.' Forbes asked the easily answered question, was the

³⁸ Darling to Horton, 15 December 1826, *HRA*, series I, volume XII, pp.762-763.

John Ritchie: 'Darling was less urbane than Brisbane and as obstinate as Macquarie; his mind lacked flexibility and subtlety; he was easily hurt and had a vindictive streak. It did not take him long to dismiss Wentworth as 'a vulgar, ill bred fellow ...'. It had taken Darling almost twelve months to arrive at this point, and the words were penned after great provocation by Wentworth. Rather than exhibiting a 'a vindictive streak' the language represents considerable restraint. Ritchie, *The Wentworths*, p.217. There is also the possibility that at least some of the voluminous correspondence was prepared by other members of his staff for the Governor's signature.

³⁹ Forbes to Wilmot Horton, 15 December 1826 in Bennett, *Some Papers of Sir Francis Forbes*, p.115.

⁴⁰ Darling enclosed copies with his despatches at this time to Robert Wilmot Horton and Robert Hay. Darling asked Hay to 'keep his [Forbes'] name out of sight, as he intruded it only for my private information.' C.H. Currey pointed disapprovingly to the use made of Forbes's private communication by Darling, and Hay, but did not extend the same regard for confidentiality to the matters conveyed by Forbes in his 'unofficial' letters to Wilmot Horton.

Darling to Hay, 16 December 1826, *HRA*, series I, volume XII, p.766;

Currey, *Sir Francis Forbes*, p.197.

Note also Macquarie's comment when he included a private letter in a Colonial Office despatch: 'altho' marked "Private" must be considered by me, *Official*', in Macquarie to Bathurst, 1 September 1820, *HRA*, series I, volume X, p.353.

punishment of Sudds and Thompson more severe than would have been inflicted if the crime had been judged in England? He replied no, and avoided all discussion of the legalities of the case. In a final paragraph he analysed the case in local political terms: 'it was to get up a case for Parliament, to be declaimed upon as a grievance in the approaching discussions of the New South Wales Bill.' A meeting had been suggested but was not strongly supported and the idea discarded, however the death of Sudds was seen as a 'War Cry' to draw people together or, if unsuccessful, as 'the ground Work of some Complaint, some pretext for contending for popular checks upon the abuses of power in New South Wales.' It was, the Chief Justice contended, 'a political juggle'.⁴¹

For Under Secretary Robert Hay Darling continued his examination of the events taking place in Sydney. He told Hay that William Wentworth was making threats of impeachment, and sending back 'Drawings or Caricatures of the Men in Chains' for publication in London.⁴² Again he confided that he was 'disappointed' in the Forbes opinion. He mentioned the newspapers, and discussed Robert Wardell: 'I have, however, no dependence on the Editor. He is without principle, and will write just as it answers his purpose.' Darling believed something should be done to control the press but was wary of taking steps in the colony which would disturb, rather than calm, political sensibilities. Whatever was done 'must be done at Home'. It was a vain wish. He revealed his thoughts on his attacker, in prose more colourful than his usual style: 'As to Young Wentworth, he is a Demagogue, and will try to lead the Emancipists. But these and the Emigrants or old Settlers are so jealous of each other that they cannot accomplish a Public

⁴¹ Darling to Wilmot Horton, 15 December 1826, *HRA*, series I, volume XII, pp.763 - 764.

⁴² If this was done, and if this is the source of the drawing later published in London the artist may have been Augustus Earle. He was in Sydney, and available for commissions - a portrait of Darling had been shown in his Sydney exhibition in October. Note that the published caricature represents Sudds and Thompson in military uniforms, instead of convict yellows, and has exaggerated the length of the collar spikes. Accuracy may not have been the intention, or an original piece of work may have been copied or worked over by later hands. It would be interesting if this well known illustration had a colonial, rather than London, source. The origin of the caricature was discussed during the questioning of Captain Robison without clarifying the matter. See frontispiece to Edward Smith Hall, *Reply in Refutation of the Pamphlets of Lieut.-Gen. R. Darling, late Governor of New South Wales, and Maj.-Gen. H.C. Darling, his brother, addressed by them to J. Hume, Esq. M.P., and Viscount Goderich* (London, 1833).

Meeting, which they have been anxious to do in order to petition for their *rights*! They should shudder, when they think of them.’⁴³ Planning for the public meeting did not seem to be proceeding because, suggested Darling, of disagreement amongst the various parties. His despatch expressed the usual caveat that people would not take much interest if the papers did not ‘agitate the question’.

Sudds and Thompson were not the only matters of business included in the mails, for the Governor had still to oversee the management of the colony. Darling wrote of unhappy settlers returning to England, who would no doubt criticise his administration when back in London. Complaining of would-be settlers, who did not know ‘a potatoe from a Turnip’, he mentioned the Bucknell family who had arrived in mid-October and were already planning their return. Martha Bucknell was D’Arcy Wentworth’s niece and her husband William was a watch maker who, although completely inexperienced in the matter, had arrived with vague plans of being employed by the government to bore for water. Darling wrote that they had not bothered to apply for a land grant, ‘I suspect there has been some disappointment in discovering the condition of their *Noble* relative.’⁴⁴ This minor incident provides another unhappy example of how Darling’s behaviour has been disfigured by historians. John Ritchie wrote that, ‘When the Bucknells arrived in Sydney, Darling sneered at the shabbiness of Wentworth’s “noble” relations.’ When the remark was made the Bucknells were leaving Sydney, and ‘sneered’ and ‘shabbiness’ are misplaced inventions for Darling’s irony was aimed at the Wentworths.⁴⁵

Darling finally saw the amendments Forbes had been working on for incorporation in the New South Wales Bill. Although of great concern to him Darling had been given no opportunity of discussing them and now, in order to

⁴³ Darling to Hay, 16 December 1826, *HRA*, series I, volume XII, p.768. Reverend McGarvie noted Darling’s portrait being on show in his diary, 23 October 1826, *Diary of Reverend J. McGarvie, 1825 – 1828*, ML A1332.

⁴⁴ Darling to Hay, 16 December 1826, *HRA*, series I, volume XII, p.768.

⁴⁵ Ritchie, *The Wentworths*, p.217.

do so, he was forced to ask the Chief Justice to show them to him.⁴⁶ Forbes had sent two drafts to London (October and early December) and may have misled the Governor on this point, for Darling wrote as if there had been only a single version, 'Mr Forbes forwarded the original Draft, before I had an opportunity of seeing it'.⁴⁷ The Chief Justice's handiwork was examined by him, the Colonial Secretary and the Governor. Forbes had chosen an unusual method for placing them in the Colonial Office - he had sent them as part of his unofficial correspondence with Robert Wilmot Horton. Governor and judge reviewed the Act together and agreed that the size of the Legislative Council should be increased. Darling suggested twelve members would form a 'Competent' Legislative Council and recommended that half should be government officers and the other half settlers and merchants.⁴⁸ In this talk Forbes and the Governor agreed over the number of members of the Council⁴⁹ but disagreed over its composition, with Forbes suggesting that a majority should be government officers. Darling opposed greater changes to the Council and, while admitting that respectable inhabitants around Hunter's River would be suitable members, thought it would be difficult to find further appropriate candidates: 'I cannot help thinking that a large proportion of the Members would be very unfit as state Counsellors.' In the despatch in which he discussed the Act Darling also suggested that a new Commission be issued for the territories, and that the all encompassing name Australia be adopted to replace New South Wales, which was only a part of New Holland.

Friction was developing, although held in check, between the Governor and the Chief Justice. Stimulated by their discussions of changes to the Act, the two men wrote to London suggesting changes be made regarding the comparative

⁴⁶ Darling to Huskisson, 28 February 1828, *HRA*, series I, volume XIII, pp.824 - 825.

⁴⁷ Later, when relations between Governor and Chief Justice had completely deteriorated, Darling wrote with some bitterness of his feelings. See Darling to Huskisson, 28 February 1828, *HRA*, series I, volume XIII, pp.824-825; and a defence of Forbes in Currey, *Sir Francis Forbes*, p.271-272.

⁴⁸ In the event the Legislative Council was increased to fourteen nominated members, seven government officers and seven settlers, plus the governor.

⁴⁹ Forbes to Wilmot Horton, 15 December 1826, Bennett, *Some Papers of Sir Francis Forbes*, p.116.

importance of the positions of Lieutenant Governor and Chief Justice. Their discussions had revealed that Darling wanted the Act amended so that the Lieutenant Governor (a post allotted to the chief military officer) would take precedence after the Governor and before the Chief Justice. Darling pointed out to Robert Hay that under the 1823 New South Wales Act the Chief Justice took precedence 'which might occasion inconvenience'.⁵⁰ Forbes wished to increase the importance of the position he held. He was a sensitive man, jealous of any supposed slight to his position. As Darling was suggesting this change in precedence Forbes was proposing to Wilmot Horton that if the numbers of the Legislative Council were increased a president would be necessary, and suggested the 'Chancellor of the Colony', presumably himself, for the position.⁵¹ At the same time he was recommending the position of Lieutenant Governor be abolished.⁵² He was disdainful of the title calling it an 'absurd office', declaring its occupant, Colonel William Stewart the senior military officer, a creature of the Governor and 'a man of straw'.⁵³

After the Executive Council Inquiry Darling acted in the expected way. Concerned by the mismanagement of the Gaol Hospital, a board was set up on 20 December to investigate it, the General Hospital, and also medical treatment on board the Hulk. Darling weighted the board with administrative strength and medical expertise. He appointed the Lieutenant Governor, Surgeon Ivory from the Buffs and, depending on the permission of the Senior Naval Officer, the Royal Navy's Surgeon Foy from the *Warspite*.⁵⁴ The inclusion of Foy suggests Darling wished to ensure the Board's recommendations were not compromised by local interests.

⁵⁰ Darling to Hay, 17 December 1826, *HRA*, series I, volume XII, pp.803 – 805.

⁵¹ Forbes to Wilmot Horton, 15 December 1826, Bennett, *Some Papers of Sir Francis Forbes*, p.116.

⁵² Commissioner Bigge had already suggested the same to Earl Bathurst, to whom he had written with some 'observations upon the *inutility of the Office*'. Forbes may have seen this letter in the Colonial Office when working on the 1823 Act. Bigge to Bathurst, 11 February 1823, *HRA*, series IV, volume I, p.881.

⁵³ Forbes to Horton, 15 December 1826, *HRA*, series IV, volume I, p. 678.

⁵⁴ Governor's Minutes 1826, AONSW 4/990.

As the Governor closed his despatches, settlers got their business and personal letters completed, and the newspaper offices parcelled up their editions for overseas subscribers. The *Regalia* carried dramatic news, for those interested in the colony, that William Wentworth was planning to impeach the governor. Previous accounts from Sydney had spoken in positive terms about Darling and his administration. Brusquely all this had been overturned.

The *Regalia* sailed on 20 December, and that day's *Australian* was calculated to take advantage of its departure. The edition retold the Sudds Thompson story, added new material and raised matters for its English readers which Darling would not have the opportunity of commenting on until the sailing of another ship for London. The newspaper discussion went backwards, for Wardell again queried whether the original conviction for larceny was justified. As the cloth the soldiers had stolen was not taken for personal gain, but to obtain release from military service, the paper argued the crime was not a larceny, therefore the sentence had been unjust: 'we feel confident that had the Jury been told what ingredients were necessary to constitute a larceny, they never would have had a verdict recorded against them.' To make quite clear for whom they were writing a subheading spoke directly to their home readership: 'OUR ENGLISH READERS'. Attempting wit, while revealing some contempt for Sudds, the long article ended: 'Surely now we may be allowed to retire from this painful discussion – a discussion which has, at least convinced some folks, that however much they may like to be *SOAPED*, it is quite as well to keep out of *THE SUDDS* !'.⁵⁵ The *Sydney Gazette* also published that morning and included material for its English readers. It printed the approving comments on the treatment of Sudds and Thompson Wardell had published on 22 November, and pointed out the changes in his position – it ended, '*Bravo, Doctor.*'⁵⁶

⁵⁵ *Australian*, 20 December 1826.

⁵⁶ *Sydney Gazette*, 20 December 1826.

When all this paper turned up in the Colonial Office the events in Sydney were treated carelessly. Lord Goderich had replaced Earl Bathurst in the Colonial Office, and in the response he signed, in July 1827, not all the elements of the case had been assimilated.⁵⁷ The Executive Council Inquiry was ignored and, in adverting to Sudds, the despatch writer quoted from the more dramatic prose of the *Australian's* initial report and made him so ill as "to be scarcely able to stand".⁵⁸ The crux of the matter had become deciding whether, under Clause 6, the Governor had the power to withdraw convicts before the act of transportation had been carried out. There was no discussion in the Colonial Office response of whether, under Clause 5, the Quarter Sessions was permitted to sentence first offenders to transportation. Lord Goderich's view was that 'I cannot but think that, until the transportation shall have been actually carried into effect, and until the Convict has reached the Penal Settlement, the Governor's power of withdrawing him cannot be lawfully exercised ...' Other errors in the despatch included a belief that Sudds and Thompson had been sentenced by the Supreme Court, rather than Quarter Sessions.⁵⁹ The Forbes-Steven's opinion had been scanned and the Colonial Office expressed the erroneous view that Clause 6 had been adopted only to mitigate a sentence - in fact it had a dual object, both to relieve and increase punishments. As Darling had acted to punish the two men, and not to mitigate their sentence (which the despatch writer mistakenly stated as being the 'object of the Law'), the Colonial Office had unjustly chided him. Goderich also directed that Patrick Thompson should be released from further punishment and, if Darling saw fit, returned to his Regiment. Ordering Thompson's release, according to historian Alex C. Castles, added 'insult to injury, at least as far as Darling was concerned.'⁶⁰ Conversely, Darling may have

⁵⁷ Goderich to Darling, 11 July 1827, *HRA*, series I, volume XIII, pp.439-441.

⁵⁸ As has been suggested, the words may have been written by Laurence Halloran: *Australian*, 29 November 1826.

⁵⁹ In the Manning Clark version Darling 'had the trial transferred from the Court of Quarter Sessions to a military court which sentenced the two to be drummed out of their regiment and worked in chains.' Clark, *A History of Australia*, volume II, p.71.

⁶⁰ Castles, *An Australian Legal History*, p.160.

been relieved at getting rid of the problem. Goderich's direction was an arbitrary abuse of power – never considered as such by legal historians. It abrogated a colonial court sentence and an Act of the New South Wales Legislative Council – perhaps the Colonial Office directive was even more serious, for its officers believed they were dealing with a decision of the Supreme Court.

Legal historians Alex C. Castles and Brian Kercher offer questionable analysis of the Colonial Office response. Castles wrote that 'Officials in London confirmed that Darling had acted illegally in varying the penalty originally imposed on the two privates by the Court of Quarter Sessions.'⁶¹ Kercher (using Castles as one of his sources) claims, '[a]n outcry about this [Sudds's death] led to an appeal to London, where the imperial officials confirmed that Darling had acted illegally.'⁶² Lord Goderich's despatch was not the result of an 'appeal to London', but a response to Darling's own despatches. The Secretary of State did not confirm Darling had acted illegally. After offering an overview of the case Goderich concluded that there was 'doubt as to the legality' of Darling's actions and himself assumed the power, which correctly belonged to the colonial courts, to order that Thompson should be released. The 'circumstances' on which Goderich's despatch was based were unsound and confused.⁶³

As Sudds and Thompson preoccupied the Governor and his staff a personal matter diverted the Chief Justice from his professional duties. The supposed thieves of his dog appeared in court. Francis Forbes was not prepared to let justice take her blind course. He made a courtroom appearance, declaring 'that if the smallest doubt remained upon the minds of their Worships, he would gladly bring forward additional evidence; his exclusive object was to ascertain the truth, and to forward the ends of public justice.' He would hardly have allowed such interference in his own court room. The trial was stood over till the

⁶¹ *Ibid.*, p.160.

⁶² Kercher, *An Unruly Child*, p.35.

⁶³ Goderich to Darling, 11 July 1827, *HRA*, series I, volume XIII, pp.440 - 441.

following Saturday⁶⁴, when the two men accused of the theft, Cutter and Palmer, were both convicted. The dog had been marked with caustic 'to give it the appearance of being spotted.' The fines imposed on the men were enormous. The blacksmith Cutter was to pay £30 and costs and his servant Palmer £20 otherwise gaol for six months. Wardell acted for the defence and Acting Attorney General Moore had prosecuted. Wardell was reported as claiming that he intended to appeal.⁶⁵

After one disastrous public ceremony Darling embarked on another, with far happier results. Admiral Brisbane died before Christmas and had to be buried. The result was one of Darling's most impressive displays. Brisbane, 'scarcely known at Government House, was interred with pomp and solemnity. Like all Darling's ceremonies it was intended to serve a purpose. Henry Dumaesq, an active stage manager, wrote, 'I never saw any Ceremony of the kind so well Conducted – every arrangement took effect – without one failure – and a *decorum* was manifested on the part of the rascally populous, that was quite edifying.'⁶⁶ Soldiers, sailors, marines, government officers and important civilians in their carriages made a powerful impression. Band music and marching feet presented images of British power and imperial emotion as military uniforms, canonicals and religious decorum impressed Protestant religious intentions.

The procession passed along the crowded George Street. Robert Wardell looked down on it all from the *Australian* office while William Wentworth's carriage found its place amongst those of the other gentlemen. Robert Howe was part of the pageant and saw Wardell who had 'perched himself upon his roost ... visible to all the crowd below.' Commenting on the bitterness between the *Australian* and the governor, the *Sydney Gazette* accused Wardell of cowardice in not taking his place in the procession, he

⁶⁴ *Sydney Gazette*, 23 December 1826.

⁶⁵ *Sydney Gazette*, 1 January 1827.

⁶⁶ Henry Dumaesq to Edward Dumaesq, 23 December 1826, AOT NS 953/315.

had not courage enough to face the immediate presence of that Ruler who has been so vilely and unjustly attacked in his Journal ... when we saw him, above us for the *first time* in our life, never did a peacock look more beggarly without his plumage, than our occasionally *sympathetic* brother did, lofty as he was, deprived of his wig.

Thompson briefly received press coverage when it was claimed an attempt had been made to bribe him to carry a message to another prisoner, and that he had informed authorities.⁶⁷

Before Christmas, Henry Dumaesq wrote to Edward about the events that had taken place in Sydney. He assumed his brother in Hobart would have read about the Sudds-Thompson Case in the newspapers. He wrote fully; doubtlessly expecting his brother to show the material to Governor Arthur. Like his brother-in-law, his sister, and the Chief Justice, Dumaesq wrote of Sudds's death as being used by partisans to influence public opinion and the forthcoming New South Wales Act. Dumaesq justified the Governor's treatment of the two soldiers for Darling had to maintain the distinction between the soldiers and the 'abominable Class'. Absent throughout most of November, when the epidemic had killed numbers of Sydney residents, Henry Dumaesq accepted the newspaper supposition and the references made during the Inquiry, that Sudds died of dropsy:

You will see how *purely accidental* and *perverse* the death of this rascal was – and the *dash* of fatality, which enabled him to shuffle off his Dropsical Carcase to the regions below, just at the moment, some event of this sort, or of any other, was wanted to serve as a Political Lever – and assist Certain Parties here, to thrust their ridiculous pretensions, into the consideration & favour of Parliament, previously to any discussions on the New South Wales Bill –

His language when discussing the campaign for constitutional reform was familiar. He wrote of a party who 'Cry aloud for their *Rights* – God help them, say I – *they should shudder when they think of them* [*italics added*]'. The italicised

⁶⁷ *Australian*, 23 December 1826.

words duplicated those used in Darling's despatch to Robert Hay. Perhaps the Governor's despatch was drafted by his Private Secretary, for its lively language is far more Dumaresq than Darling. Dumaresq revealed that Government House had written to counter other impressions being sent back to England. He was aware of the effect their opponents' letters would have in Britain amongst the opposition, and on contemporary public opinion:

the case is *just one* of those, to work on the sensitive [sic] genius of *modern John Bull*, and if not contradicted, would act like Ginger, on our Cock-tail Philanthropists – who would go off, with their Heads up – and run like real Devils, until they had done some mischief.

Dumaresq's language may suggest that he and the government had endeavoured to discreetly exert some control over the *Australian* during 1826 for he chose the words 'broken loose' to describe the new direction in opposition which the paper was taking. He also told his brother that he was cancelling his three subscriptions for 'the Paper Contains no information, and I have no idea of paying for impertinence.'⁶⁸

While the senior men of the administration, at least in their official letters, had seen political manipulation and motivation behind the furore over Sudds's death Eliza Darling had also pointed to private reasons. The *Sydney Gazette* also suggested that personal grievance lay behind Wardell's viciousness towards the Government and accounted for his rapid transition from government supporter to critic as frustration at not being made Acting Attorney General. Just as the *Australian* had done, the paper used Sudds in a jokey allusion. Wardell, 'having once began to *lather* away, was so delighted with the ocean of *sudds* on which he was embarked, that he never has been able to regain the shore'.⁶⁹ Joseph Sudds had been dead four weeks. The real man had dropped away from the discussion leaving his memory as a weapon with which to attack Darling. Offering a reason for the *Australian's* change of attitude towards Darling, the *Sydney Gazette* alleged Wardell had told friends that he wanted to 'come down' on the Government

⁶⁸ Henry Dumaresq to Edward Dumaresq, 23 December 1826, AOT NS 953/315.

⁶⁹ *Sydney Gazette*, 23 December 1826.

when the opportunity arose, for the editor 'respected not the Government in his heart.'⁷⁰

That Christmas, drunken convicts filled the Watch House and intoxicated prose was published in Wardell's newspaper. The paper ended 1826 on notes of extreme bitterness and unjustified threats:

SUDDS died five days after he submitted to the illegal punishment, and though his death did not alter or extend the illegality of any of the enumerated acts, and though we cannot ascribe his death to them, or any of them, yet we are bound to admit that if mortal proof to that effect were obtainable, the deed which occasioned his death would, by our law, be termed murder, and the perpetrators could, by the Royal Clemency alone, be saved from the --!⁷¹

Crime continued to touch upper class lives. Government House itself was the scene of a robbery and the *Monitor* reported that property had been 'stolen from the *chateau* of the Chief Ruler of the Land.'⁷² Fanny Macleay visited the Sydney Police Court on 3 January to give testimony after she had discovered an intruder in the family's dining room. He was convicted of being concealed in a dwelling and sentenced to spend the next four months working in chains.⁷³

E.S. Hall appeared in court to defend a case of libel brought by Hannibal Macarthur after a *Monitor* article had criticised the flogging of a convict on Macarthur's farm.⁷⁴ Macarthur was awarded £100 damages and costs. Some of Hall's readers came to his financial aid, and he acknowledged their assistance in his columns. The pen names they chose indicated the tenor of radical thought: 'Trial by Jury'; 'An enemy to illegal Punishment'; 'An enemy to the Faction'; 'Free Press'; 'An Australian Jury, without J.P.'s or Military's'; 'A Lover of a Free Press'; 'An enemy to all Tyrants'; 'An enemy to Torture'; 'House of Assembly'; 'Wilks [sic] and Liberty!'; 'A Lover of British Liberty'; 'A Descendent of William

⁷⁰ *Sydney Gazette*, 4 January 1827.

⁷¹ *Australian*, 27 December 1826.

⁷² *Monitor*, 29 December 1826.

⁷³ *Sydney Gazette*, 5 January 1827.

⁷⁴ Note 169, *HRA*, series I, volume XII, p.841.

Tell'; 'A Son of Convicts'; 'A British Spark'; 'An Oppositionist to the Merinos'.⁷⁵ Most were the expected sort of names, only 'illegal Punishment' and 'Torture' were new additions to the colonial liberal vocabulary.

The *Warspite* sailed for Valparaiso on 6 January. It had possibly brought a mortal epidemic into the colony. Some of colonists who had flocked to the shores of Sydney Harbour to see it, or heard the guns announcing its arrival, were dead and buried. Aboriginals who may never even have known of its existence also died in its train. It sailed from a divided and angry place.⁷⁶

⁷⁵ *Monitor*, 29 December 1826.

⁷⁶ *Australian*, 10 January 1827.

Chapter Sixteen

Personal grievances and imperial arguments

In 1827 different views of New South Wales colonialism were put forward by William Wentworth, Francis Forbes, Ralph Darling, and Henry Dumaresq. None of their statements were made because of the Sudds-Thompson Case, but each of them was subtly influenced by the bitterness that had sprung up as a result of the Case. Although the first two men were liberal, and the latter two conservative, and their discussions were underpinned by these viewpoints, it was not solely two theoretical forces which were in conflict. The arguments of Wentworth and Forbes were colonial, those of Darling and Dumaresq were imperial. Each of the four men was concerned to comment on the present mode of governing the colony, and canvassing future change.¹

In January the illnesses and deaths of the spring and early summer gave way to annoying sore throats, and Sydney's health was little improved when the night cart was emptied into the public water tanks.² There was talk of a fourth newspaper being published, and the *Sydney Gazette* asserted its self-proclaimed place as the principal colonial newspaper by beginning daily publication on 1 January.³ Public concerts, which had been 'the rage', dipped in popularity. The *Australian* had helped raise the general level of ill feeling and conflict in the small community, and now it expressed a pious hope that the concerts would again have 'that degree of patronage extended towards them, which they deserve.'⁴ Political partisanship and personal hostility drove wedges into the community, and the

¹ Which restates the quotation used in the Introduction to mark the political boundaries of this thesis - 'As settlement spread, the relative importance of the gaols declined and the penal method of government became inadequate. What new form of power was to take its place concerned all interests in the colonies.' Michael Roe, *Quest for Authority in Eastern Australia 1835 - 1851* (Parkville, 1965), p.1.

² *Australian*, 17 January 1827.

³ *Sydney Gazette*, 5 January 1827.

⁴ *Australian*, 10 January 1827.

Australian succeeded in opening a minor controversy by reporting that the Governor's health had been drunk in disrespectful silence at the Freemason's Dinner. The charge was denied by the Masons, and discussed by the papers.⁵ William Wentworth made a brief, almost feudal appearance in the newspapers, when it was reported he had a man committed to stand trial before the Quarter Sessions charged with cutting wood on his estate.⁶

Freed at last from Sydney Gaol, Laurence Halloran returned home to 53 Phillip Street. Broke, as always, he floated several desperate and impractical money making projects. By borrowing the type and presses of the *Australian* he planned to edit and publish his own newspaper, the *Gleaner*.⁷ With the government under attack from both the *Australian* and the *Monitor* he approached the Governor to 'sanction' his paper. Darling interpreted his request as an unsubtle 'overture', which he rejected as adding to 'the Contention of Newspapers'.⁸ Halloran went ahead, founding a financially disastrous weekly newspaper which he managed to keep afloat from April until the end of September. He also planned to publish two volumes of his own sermons, and advertised unsuccessfully for subscribers.⁹ In plans he was indefatigable, for he was also proposing to open a school for a hundred boys, and to sell tickets for public lectures of his pupils on the first and third Sunday mornings of each month. The difficult, endearing, and impoverished lecturer offered an appealing topic for his first intended lecture - the 'Prosperity of the Wicked.'¹⁰

The *Australian* attack on the government over Sudds Thompson was carried into the new year with Wardell beginning yet another article on the familiar topic - 'We relinquish all further commentary on the topic which has agitated the Colony for the last six weeks'. It didn't. The article assaulted Darling's authority,

⁵ *Australian*, 3 January 1827.

⁶ *Sydney Gazette*, 16 January 1827.

⁷ *Sydney Gazette*, 5 January 1827.

⁸ Darling to Hay, 9 February 1827, *HRA*, series I, volume XIII, , p.101.

⁹ *Australian*, 13 January 1827.

¹⁰ *Ibid*.

impugned his honesty, and undermined his moral authority. It wrote of the 'utter disregard for truth which has been manifested' by the government and its supporters.¹¹ Patrick Thompson appeared as a minor celebrity when the paper claimed all Windsor had turned out to see him. The ex-soldier had not been infected by convict solidarity, for he turned in the convict Palmer for attempting to bribe him when they were both imprisoned in the Penrith Gaol. The lawyer's paper praised the tale-bearing Thompson for acting 'the part of a vigilant and trust-worthy keeper.'¹² By 19 January Thompson had been sent from Windsor to Sydney, where he was kept aboard the Hulk.¹³

Ralph Darling, Eliza Darling, Henry Dumaresq, Francis Forbes had all suggested that the Sudds-Thompson Case was being manipulated to support the campaign for constitutional reform. Yet the newspapers goaded William Wentworth, and his associates, for not taking action and organising a public meeting and a petition to discuss these concerns - the *Australian* used the term 'shilley-shalleying' to deride their indecisiveness. Perhaps to encourage the faint hearted, perhaps to suggest what Wardell wanted, the settler's petition to contain, the *Australian* said the government was afraid the colonists would use the opportunity to pass a vote of censure.¹⁴ The *Sydney Gazette* responded to its rival's criticisms saying it was misinformed and that the delay was being caused by William Wentworth, and one or two others, waiting to see the results of Sir Thomas Brisbane's efforts on their behalf in Downing Street.¹⁵ Once again, the newspaper which seemed best informed about the activities of William Wentworth was the *Sydney Gazette*.

The newspaper needling brought results. A public meeting was called for Anniversary Day, Friday 26 January. Amongst the men sponsoring the meeting

¹¹ *Australian*, 3 January 1827.

¹² *Ibid.*

¹³ Sydney Gaol Register, AONSW 4/6430.

¹⁴ *Australian*, 13 January 1827.

¹⁵ *Sydney Gazette*, 16 January 1827.

were some who had signed John Macarthur's petition fourteen months before.¹⁶ To obtain broad settler support only two subjects were to be discussed, trial by jury and representative government. It seemed the disparate community could only be united for political action if the aims were limited to an appeal for traditional British constitutional rights – rights recognized by Whigs, Tories, and radicals.

The *Australian*, preparing public opinion for the meeting, attempted to push forward another topic for discussion – the rights of the young native born settlers. Twenty of them, claiming to be men of property, seemingly initialled a letter asserting that '*the soil is their birth-right, their legitimate inheritance!*'. It was a popular sentiment the newspaper was pleased to champion:

The native youths have been neglected ... To them the day dreams of a distant home are unknown; and yet they alone are treated as strangers, as if their home was to be found in any country except in the land which gave them birth.¹⁷

Wardell's sincerity was questioned by the *Sydney Gazette*, which wrote of 'the cause he pretends to espouse', and reminded readers that they themselves had discussed the subject some 12 or 13 months before.¹⁸

At dawn on the 26 January, the colony's thirty-ninth anniversary, the Royal Standard and the Union flag were raised at Dawes Battery. The ships in port had been decorated,¹⁹ and at mid-day the public meeting in the court house had a dramatic beginning. As a 39 gun salute was fired from the battery, Wentworth attacked the government. In preparing a case of impeachment against Darling, Wentworth had been slow in acting; at the meeting, he was energy and dynamism. His talents lay in speech-making - courtroom oratory and the dramas

¹⁶ *Ibid.* Supporters included the emancipists William Redfern, Simeon Lord, Samuel Terry, Daniel Cooper, and the free emigrants Sir John Jamison, William Lawson, William Cox, John and Gregory Blaxland, J.T. Campbell, Archibald Bell, D'Arcy Wentworth, William Wentworth, Robert Wardell, and E.S. Hall.

¹⁷ *Australian*, 20 January 1827.

¹⁸ *Sydney Gazette*, 24 January 1827.

¹⁹ *Sydney Gazette*, 27 January 1827.

of public meetings inspired him. Like Robert Wardell, also a lawyer, he used an adversarial approach to forward his claims; consensus was alien to them both.

Wentworth took the lead and ‘commenced operations in his usual energetic, lucid, and unsophisticated style.’ He claimed the matters under discussion had been limited ‘to procure unanimity’, and immediately widened the breach. He told his listeners that limiting the topics to be discussed did not mean there were ‘no other wants nor grievances existing in the present state of the Colony.’ His oratory was lively. He used a rhetoric of opposition, scoring easy laughs with criticism, without presenting real solutions to the problems he drew. He disapproved of the infant civil service, the military presence, and imperial ceremony. He did not suggest how the colony could be managed without these tools. His family had benefited, greatly, from the system of government he now condemned:

the numerous body of civil and military officers, who are continually among us – these, certainly, will be in favour of taxation (a laugh) – they will no doubt make it their business to side with the government; and, being paid out of the civil purse, would no doubt lend a helping hand to screw as much out of the pockets of the people to support procession and parade, as they well can.²⁰

After thirteen months of Darling’s administration Wentworth attacked the Governor’s bureaucratic radicalism – and no doubt his words were supported by government officers upset by Darling’s reforms.²¹ Darling was the Tory administrator of a collectivist administration, establishing a competent and modern civil service. Wentworth was bitter towards the Legislative Council, from which he had been excluded. Outside that body he was a powerful antagonist, if within the Council his criticisms may have been muted. Wentworth criticised it for not knowing how to use the powers it had been given, for imposing taxes and excise, for turning the colonists against themselves, and of passing acts of indemnity to protect offenders. Either because Howe believed it to

²⁰ *Australian*, 31 January 1827.

²¹ See Appendix Five for Henry Dumaresq on this topic.

be so, or to soften Wentworth's words for his readers, the *Sydney Gazette* claimed that the strong and offensive attack the latter made on the Legislative Council was 'not so strong or offensive as might have been expected.'²²

Critical of the Council which moderated the governor's authority, Wentworth attacked the boards of inquiry set up by Darling as a basic decision-making device. They offered Wentworth an easy target. He described the information they gathered as flowing back to a central point, and drew a colourful analogy of the government as a spider within its web. Some in the audience may have remembered his previous use of a 'yellow snake'. But with this series of criticisms the *Sydney Gazette*, the government's defender, disagreed. Howe's paper suggested the boards did not increase government power, as Wentworth made out, but 'diminish[ed] that immense influence' held by the Governor.²³ Wentworth did not mention that Darling had appointed D'Arcy to a new board in December.²⁴

The petition to the King, supported by the meeting, requested constitutional reforms.²⁵ The document was largely the usual sort of thing - even down to the ritual abuse of the Macarthurs, 'a certain inconsiderable party here' - yet it was also very different. The rights of the native youth were added, and it was studded with criticisms of Governor Darling which would not have been included if it had been written before the death of Sudds. The importance of the local papers was maintained, and they were depicted as a moderating influence on arbitrary government. Their 'unrestricted Liberty' was held responsible for 'detecting and preventing numberless abuses and oppressions, the natural effect of that arbitrary system of Government, which was necessarily coeval with the foundation of the Colony'.

²² *Ibid.*

²³ *Sydney Gazette*, 27 January 1827.

²⁴ 8 December 1826, D'Arcy Wentworth Correspondence, ML A 754-1, p.263.

²⁵ Darling to Bathurst, 31 January 1827, *HRA*, series I, volume XIII, pp.50 - 59.

Compared with the *Australian's* scorching denunciation of the Governor in December, and its continuing criticisms in January, the petition's language was critical but generally moderate. It was a political document within an imperial setting. It placed an idealised colony before the King and recognized that the settlers had come together because of the expiring of the 1823 Act and sought to influence the new Act. The petitioners asked to be placed on the level of other plantations, and to be 're-invested' with the rights of Englishmen - trial by jury and taxation by representation. To indicate that the reforms called for were necessary the current method of governing the colony was denigrated - 'inefficient as the present system of Government has been found to administer to their growing wants and to foster their nascent industry.' An elective assembly was offered as a solution to these difficulties and the petition suggested that freeholders possessed of one thousand acres or more would be eligible to sit, after being elected by 'the entire of the free population' who were freeholders or householders of ten pounds a year.

With the possibility of real political change before them the petition's organisers took care to see that their work would not be buried by the Downing Street civil servants and they prepared three copies. One was to be handed to Governor Darling for forwarding to the Secretary of State at the Colonial Office, one was to accompany Gregory Blaxland to England for him to give Sir James Mackintosh in the House of Commons, and one was to be sent to Sir Thomas Brisbane for him to have presented in the House of Lords.²⁶ The organisers were seeking opposition support in Westminster to see that their demands were taken seriously.

Wentworth represented the petition as a panacea, without it he promised that 'badly as things have gone on lately, they will go on much worse.'²⁷ His criticisms were undisciplined, and appealed to the personal grievances of his

²⁶ *Sydney Gazette*, 27 January 1827.

²⁷ An extract will be found in Appendix Four: *Australian*, 31 January 1827.

listeners. Like another critic, Francis Forbes, his disparagement of the practical measures taken by Darling for governing the colony were unrealistic. Both Wentworth and Forbes made criticisms which, while seemingly offering local solutions, did not consider the problems which would be raised, in England and New South Wales, by the granting of constitutional reform in a place which continued to be deliberately presented in Britain as a frightening punishment, and was the destination for thousands of transported criminals.

Neither in the reports of the meeting, nor in the petition, was any mention made of Joseph Sudds or Patrick Thompson.

On the day of the public meeting the Governor left Sydney for Government House Parramatta.²⁸ That night at the Anniversary Dinner ('the Company being composed of Emancipists and their immediate Connexions and Friends', grumbled the Governor to Robert Hay),²⁹ there was no repeat of the discourtesy that was supposed to have occurred at the Freemasons' function and he was toasted as the *British Grenadiers* was played.³⁰ When Darling returned to Sydney on the following Tuesday he met a delegation and accepted the petition they carried. Presumably he had read the *Sydney Gazette's* report of the meeting but only on the following day was he able to read what William Wentworth had actually said. On the previous Saturday, readers of the *Australian* were denied a full report of Wentworth's performance: 'Mr. Wentworth proceeded with his remarks, the best portion of which we regret, that the stupidity of our Reporter has kept from the public.'³¹ But then on Wednesday, the *Australian* carried an account of Wentworth's speech which was far stronger, and more offensive, than the *Sydney Gazette* had indicated.

The *Australian's* reporter was back in favour, for now he supplied the complete text of Wentworth's speech - flatteringly annotated with 'cheers', 'a

²⁸ *Sydney Gazette*, 27 January 1827.

²⁹ Darling to Hay, 9 February 1827, *HRA*, series I, volume XIII p.98.

³⁰ *Ibid.*

³¹ *Australian*, 27 January 1827.

laugh', 'great laughter.' Where had the words come from? As Wentworth was reported in direct speech it may have been taken down by a shorthand writer for a rival paper and not used. Wentworth may have gone through his remarks again for the journalist, or it may have been based on Wentworth's own notes, to which the cheers and laughter had been added at appropriate points.

Darling forwarded the petition to the Secretary of State, after adding several enclosures of his own which countered their arguments with statistics.³² Taxation had been complained of and Darling, while noting that no direct tax was paid in the colony, gave tables showing the duties and dues which had been collected. The Governor denied the petition's claim that an increase in taxes was being planned. The petition asserted that the colony could provide one hundred members for an elected assembly, and noted that there were already eighty-eight magistrates, selected 'on account of their property and education'. Darling listed the eighty-three actual magistrates, pointing out that twenty were government officers, twenty-one military officers on full pay, ten military officers on half pay, and only thirty-two were settlers. Darling claimed it had been necessary to use officers on full pay because 'private Gentlemen could not be found to perform the Duties in the Districts required.'

In his public despatch to Earl Bathurst, which accompanied the petition, and which could end up being quoted in the House of Commons, Darling was careful not to reply to any of the personal criticisms, and did not offer his own views – these he saved for a 'Secret and Confidential' despatch to Under Secretary Robert Hay.³³ For Hay, Darling attempted to unravel the political implications of the meeting and the petition. He accepted that the gathering had been well supported and 'attended by several respectable Persons'. He asserted that though confident of achieving trial by jury they were less so in obtaining a Legislative Assembly and for that were relying on the help of Sir Thomas

³² Darling to Bathurst, 31 January 1827, *HRA*, series I, volume XIII, pp.50-59.

³³ Darling to Hay, 9 February 1827, *HRA*, series I, volume XIII, pp.96 - 101.

Brisbane, Sir James McIntosh and other opposition members. In choosing the names he placed his predecessor first.

Darling was critical of Brisbane's behaviour, blaming the ex-Governor for having sought the support the emancipists at the end of his period of office to compensate for his own feelings of betrayal by the Colonial Office. Brisbane had chosen sides and encouraged the emancipists to believe that they could gain the reforms they wished for - in this analysis Darling wrote of the emancipists as the group activating for political change. Yet the future role of the emancipists was not mentioned in petition, and they had not been dominant in the list of meeting organisers. Darling went on to accuse Wardell and Wentworth of using the emancipists for their own political ends. Brisbane dining with the emancipists was a strong memory at Government House, for Darling's Private Secretary had been one of the guests -

Sir Thomas Brisbane's proceedings, previous to his departure, have placed the Government in a situation of great embarrassment, from which it cannot easily be extricated. Conceiving himself ill treated at Home, he threw himself at the last moment into the Arms of the Emancipists and unreservedly espoused their Cause. He had remained here Four Years without ever having paid them any attention. In short, he shut himself up at Parramatta where he saw no one. When on the eve of his departure, to answer a Political purpose, he dined with and entertained the Emancipists, and seems to have persuaded them that their rights are only limited by their wishes.

This probably would have had but little effect on these People, who, after all, are not, I believe, ill disposed, if left to themselves; but it has rendered them more than susceptible of the efforts of such men as Dr Wardell and Mr W. Wentworth, who have an object to answer, and who are ever ready to inflame their minds.³⁴

Darling noted the continuing antagonism of the *Australian*, and stressed the need for restraint to be imposed on the newspapers. In this private letter to Robert Hay, the Governor criticised Robert Wardell for publishing 'the most

³⁴ *Ibid.*, p.97.

perverted and distorted Statement of facts', and suggested personal reasons for his attacks:

It is evident the Editor was tired waiting the reward, he conceived he had earned by his *honesty*; and scurrility and misrepresentation being more fruitful to his feelings, he has resumed these, and continues to indulge his fancy apparently without apprehension or restraint.³⁵

Darling offered the Under-Secretary his objections to the installation of an assembly, but suggested possible practical concessions should the matter be seriously considered by the House of Commons. There was a basic difference in the way New South Wales was seen by the Governor and his subjects. Darling disagreed with the settler assertion that the penal colony was a replica of the homeland - 'it is evident that altho' this is an English Colony, there is no similarity whatever in its Composition to that of England.' Darling's language was firm in drawing attention to the falsity of the settler's position - 'The evil of this place is the passion, which exists, that New South Wales should be the Counterpart of England.' If an assembly were granted the Governor foresaw problems in getting country representatives to attend meetings - 'Where the Servants are *all Convicts*, the immediate, the Constant Superintendence of the Master is indispensable to the preservation of his Property.' Stressing the infancy of the colony Darling conceded that if it were decided to increase the nominated Legislative Council to fifteen or twenty members this could be done without creating undue problems. He also saw no difficulty if it was decided to allow members, 'under certain regulations' which he did not specify, to initiate legislation. This concession, he suggested, might satisfy some settler demands. He even anticipated few problems if it was decided that the non-government members of the Council should be freely elected. If the Council was to be increased in numbers, Darling advised that neither the Chief Justice nor the Archdeacon should be members – but emphasised that this was no criticism and in fact he 'acknowledg[ed] my

³⁵ *Ibid.*, p.98.

obligations to them.’ In December, as noted, Forbes had suggested that if the size of the Legislative Council was increased then he should be appointed its president.³⁶

Despite the courteous words a rift was opening between Governor and Chief Justice. C.H. Currey placed its origin in Darling’s disappointment with Forbes’s attitude over the Sudds-Thompson Case, and suggested this ‘developed into acute displeasure’ when the two disagreed over Darling’s proposals for licencing the press in April 1827.³⁷ Although Currey proposes the break occurred in April, a change in Forbes’s attitude towards the Darling government was perceptible in his letters to Wilmot Horton on 15 December 1826 and 6 February 1827. By his next communication, on 6 March 1827, he had adopted an openly hostile attitude towards the head of the colonial state, and his entourage. From then, Forbes used this private correspondence to undermine Darling’s reputation with the Colonial Office. The Chief Justice became alienated not just from Ralph Darling, but also from those about him at Government House – Henry and William Dumaresq, Alexander Macleay, Thomas de la Condamine. It was not Darling’s distant demeanour which offended Forbes but the informality of Government House, his exclusion from a perceived inner circle, and the Governor’s friendly yet condescending treatment of him as a highly placed but subordinate officer.

On 6 February Forbes’s criticism was applied with subtlety. He complained to Wilmot Horton of the lack of a court house and proper debtors’ prison. He noted that the lack of workmen had been offered as an excuse, ‘yet I have seen other buildings rise up with surprising rapidity – stables, temples for bathing &c &c’.³⁸ Macquarie had quarrelled with Commissioner Bigge over his

³⁶ In suggesting the exclusion of the Chief Justice could Darling be obliquely indicating his awareness of Forbes’s ambition? Forbes to Wilmot Horton, 15 December 1826, Bennett, *Some Papers of Sir Francis Forbes*, p.116.

³⁷ Currey, *Sir Francis Forbes*, p.237.

³⁸ Forbes to Wilmot Horton, 6 February 1827 in Bennett, *Some Papers of Sir Francis Forbes*, p118. Compare with Morton Herman’s view: ‘The records of the Macquarie era had been thick and heavy with repairs of buildings, construction, and artisans. Those of Darling’s period were almost a desert in

building projects and this suspicion of extravagance, a suggestion that Darling was following in his predecessor's footsteps, was sure to attract unfavourable attention in Downing Street. In fact, public building was modest throughout these years. Like Darling, Forbes ended with measured praise, 'For the present Governor I have the highest respect'. Only four weeks later the Chief Justice undermined the basis of trust between the Colonial Office and their premier representative in Sydney, by suggesting that Darling could be attempting to deceive them:

I think it more than probable that you will be written to upon the subject of this same power [the rights of the governor in dealing with transported convicts]; and as there are ways of putting questions so as to elicit the answers that one desires to have, so it is possible that a question may be propounded to your office in such a form as to mislead.³⁹

In February, as Darling was preparing despatches to Earl Bathurst and Robert Hay on the settlers' petition, Forbes sent his own appraisal of it to Wilmot Horton. Familiar with Government House discussions, he clearly countered those of the Governor which he knew would be sent to the Colonial Office. The departing Governor Brisbane had welcomed the men bearing him a farewell address by praising their new home as 'this infant Empire'⁴⁰, Forbes postulated an idea of the colony greater than the imperial penal settlement he served - 'this second giantess of her [England's] begetting'.⁴¹ He informed his correspondent that it was England's obligation to introduce English principles: 'It is her [England's] interest; it is her duty; she owes it to her own glory and to the happiness of all Asia.'

The Chief Justice put forward an idea of progress in Australia's development, from colonial prison to liberal nation. Generally supportive of the petition, he declared the sponsors of the public meeting to be 'some of the most

this regard, unrelieved by any appreciable oasis of architectural activity.' Morton Herman, *The Early Australian Architects and their Work*, second revised edition (Sydney, 1970), p.112.

³⁹ Forbes to Wilmot Horton, 6 March 1827 in Bennett, *Some Papers of Sir Francis Forbes*, p130

⁴⁰ Reply to Address by Sir T. Brisbane, 26 October 1825, *HRA*, series IV, volume I, pp.631 – 633.

⁴¹ The following discussion is drawn from Forbes to Wilmot Horton, 6 March 1827 in Bennett, *Some Papers of Sir Francis Forbes*, pp.125 – 126.

respectable and opulent proprietors in the Colony'. The meeting was 'creditably attended, decently conducted, and quite unanimous in its resolutions'. That it was 'decently conducted' may have been disputed by William Wentworth's targets, or those who read his reported words.

Forbes countered arguments that an assembly would be unsupported because it would interfere with people's private affairs, and that the population was too small to provide members. This point of view (the Governor's), said Forbes, was 'to object merely to the specific remedy, but not to deny the fact of disease, or to prescribe any palliative'. Forbes supported the desires of the free emigrants, 'whom it was impossible to persuade that, because their servants were prisoners, they likewise were liable to prison-discipline.' Allowing that New South Wales was a penal colony, and comparing it with the slave colonies of the West Indies, Forbes argued that it had never been contended that in the latter colonies 'their forms of government and measure of British rights were less, because their estates were cultivated by their slaves.' In this conflict of visions the Chief Justice contested the big prison rhetoric of Governor Darling, and the Colonial Office.⁴² In his comparison of slave states and penal colony Forbes did not mention the unique position in New South Wales, where a majority of the settlers were ex-convicts and a large number of inhabitants were convicts. As if in answer to Darling, Forbes asserted his belief 'that the colonies were only a more remote portion of the British realm'.

The Chief Justice's disillusionment grew rapidly. By late March he felt free to admit, 'I support the Governor upon all occasions, when I can; and, when I cannot, I privately express my reasons, and keep my counsels to myself.'⁴³ This

⁴² A Van Diemen's Land letter writer, signing himself 'AN EXCLUSIONIST', satirised this point of view in 1830, 'I always take care that my "Convict rascals" shall be well worked, well bounced, and worse paid, that they may frequently be reminded, that this Island is only a *gaol*, the *Governor a Gaoler*, and all us "*Respectables*" downwards, only "links in the same chain": 7 May 1830, *The Tasmanian and Austral-Asiatic Review*.

⁴³ 22 March 1827, Bennett, *Some Papers of Sir Francis Forbes*, p. 143.

protestation of a dignified and statesmanlike attitude was in reality subversive tittle-tattle for Robert Wilmot Horton – and through him the Colonial Office.

Forbes's estrangement was nurtured by the press. As the opposition papers attacked the Governor and praised the Chief Justice, Forbes accepted their insincere flattery. Contrary to the evidence of his own letters he denied courting public approval. Forbes revealed himself either innocent, or blindingly self-satisfied, when he opined - 'the good opinion of the public, over which one presides is worth having; and the judgment of the people, altho' sometimes misguided, is always grounded on right feeling – their suffrages are sometimes just.'⁴⁴ Given Darling's difficulties over Sudds and Thompson, Forbes's words were pointed, and he continued on to suggest his own contrasting popularity, 'I can safely say that, if I have had the good fortune to win the confidence and well-wishes of this community, it has been by the simple acts of honesty and an impartial discharge of my duty.'⁴⁵ Presumably he detected this public love in the columns of the Sydney newspapers. These images of his own standing with the public contrasted with the Governor's position which he described four weeks later - 'To honest errors, but still not the less errors, because honest, I attribute that degree of odium, perhaps unprecedented, which at this moment has fallen and rests upon the government of New South Wales.'⁴⁶ Fanny Macleay also saw the Governor's unpopularity, and described a man very unlike the one whose image Forbes was delineating in his letters to London - 'The Govr is not liked, which to me is a surprising circumstance, because he is really a good Person & anxious to please'.⁴⁷

To tackle misconceptions in the Colonial Office Henry Dumaesq, after nearly being killed in a duel with Robert Wardell,⁴⁸ was sent to London as

⁴⁴ *Ibid.*, 6 February 1827, p.120.

⁴⁵ *Ibid.*, p120.

⁴⁶ *Ibid.*, 7 March 1827, pp.132 - 133.

⁴⁷ 25 March 1827: Earnshaw and Hughes, *Fanny to William*, p.77.

⁴⁸ Dumaesq was lightly wounded by Wardell. Henry Dumaesq to Edward Dumaesq, 21 March 1827, AOT NS 953/315.

Darling's representative, to put forward the administration's arguments concerning the forthcoming Act for governing New South Wales. Shortly after his arrival Dumaresq wrote, for the Colonial Office, a document which offered an overview of the colony from Government House. His comments were put forward as 'reflections' on the settlers' petition. As expected Dumaresq's views mirrored, and expanded, Darling's February despatch – and did so with a distinctive literary voice.⁴⁹

Dumaresq countered the pretence that New South Wales was a simple fragment of England. He postulated it as a different sort of society, and claimed as an 'Axiom in Civil Polity that no Country is fitted for the unrestricted admission of the Free Institutions of England, in which there are conditions of People, whose rights are unequal and dissimilar.' No argument for constitutional reform had seriously confronted the 'unequal and dissimilar' classes of the colony's inhabitants. In their daily lives, claimed Dumaresq, the free settlers and the prisoners were not constrained by the same laws, for the majority of the population were bound by penal regulations: 'the careful Provisions and rigorous application of which will alone supply the place of virtue.'

Dumaresq asserted the primacy of New South Wales as a penal colony – this was the point at issue when John Bigge had been despatched to conduct his Inquiry. In such a situation, Dumaresq argued, the claim of 'rights' were 'absurd'. The petitioners represented themselves as free men, but Dumaresq broke this unifying classification to point out that in the colony there were free emigrants and emancipists, and their assumed rights were not identical. If their wishes were granted, and English constitutional rights given them, emigrants and emancipists would not be able equally to participate in them for freedom had not restored all

⁴⁹ Part of this manuscript was published by S.K. Proctor as 'Henry Dumaresq on the Sydney Press in 1827', *JRAHS*, June 1971, pp.172 - 181.

A complete transcription of Dumaresq's text is given in Appendix One. Proctor gave only the first half of the document, which has never been published in its entirety. Henry Dumaresq, 'Reflections suggested by the Address voted at the late Public Meeting in New South Wales and some Proceedings subsequent thereto', CO 201/187.

the civic rights the emancipists had possessed before their conviction. Dumaresq's analysis linked the emancipists with the prisoners. He pointed out that the rights claimed had 'been forfeited by the Emancipist and Prison Population'. The distinction he was making was based on Francis Forbes's August 1826 opinion that emancipists who were free by servitude were not eligible to sit on juries.⁵⁰ Although (as has been noted) the Chief Justice quickly realised he had made a mistake, he had done nothing to correct his error. The matter was crucial, misunderstood in the colony, and not alluded to in the petition.

As Henry Dumaresq saw it the colony was clearly divided in two. On one side he placed the emancipists and convicts, who had lost their rights, and on the other he placed government officers, and the free emigrants who 'voluntarily surrender so much of them [their rights], as is inconsistent with the structure of society there; for advantages, it may be presumed, they consider as equivalent to the sacrifice.' After having freely agreed to place themselves under 'the protection of a Government', which had been structured 'to control and reform Criminals', Dumaresq argued that the free emigrants could not now reclaim English rights. He was suggesting that land grants and convict servants provided some compensation for a lack of a jury system and the privilege of standing for or electing legislative representatives.

The newspapers were criticised, and in disputing press freedoms Dumaresq used a source other than the standard colonial justifications for its existence. To illustrate the arguments he was contending against he took some lines (without giving his source) from James Mill's 'Liberty of the Press':⁵¹

It is said by the Advocates for the unlimited Freedom of the Press that the end, which is sought to be obtained by allowing anything to be said in Censure of the Government, is to ensure the goodness of that Government and that discontent with the Government is good,

⁵⁰ Darling to Bathurst, 2 September 1826, *HRA*, series I, volume XII, pp.519 – 522.

⁵¹ Mill's unacknowledged presence was noted by S.K. Proctor in 'Henry Dumaresq on the Sydney Press in 1827', p.173.

in so far as it may be the means of preventing, real Cause of dissatisfaction.⁵²

What the petition described as a great boon Dumaresq depicted as licentious, obstructive, and an ill in a society such as New South Wales. The newspapers made his point that English rights and colonial realities did not go together, and his criticisms were drawn from personal experience. He condemned the opposition papers not only for their disparagement of government measures but for interference 'in the most ordinary details of the Public Departments', and their willingness to publicise the grievances of officers rebuked or dismissed. Dumaresq pointed out that for a majority of the population the government was unlovable, for it saw the administration 'only in the odious light of Task Master and Oppressor, and cannot be expected to feel content with it, or be satisfied with Regulations framed almost wholly with the view of restraining their favourite, but vicious propensities.' He asked if men can 'love what they are taught only to dread?'. Opposition papers working on these inflamed sensibilities 'may excite them to disturb the tranquillity of the Colony.' His words were very similar to Darling's: 'It is impossible not to perceive that in the present state of the Press, the tranquillity of the Colony cannot be preserved.'⁵³ Dumaresq censured the papers for their treatment of 'imaginary evils' and discussions of 'suppositious grievances'.

Like Governor Darling, Henry Dumaresq particularly disapproved of the *Monitor*. 'The safety of New South Wales depends on the separation and disunion of the Convicts' and the newspapers, especially the *Monitor* served to unite convicts. He classified it as 'a Convict Newspaper' which found its readers amongst the prisoners, and the soldiers. Dumaresq claimed that some assigned

⁵² Some of Dumaresq's words were direct quotation from Mill's article 'Liberty of the Press', written for the *Supplement* to the *Encyclopædia Britannica* between 1816 and 1823, then collected in book form in 1825: 'The end which is sought to be obtained, by allowing any thing to be said in censure of the government, is, to ensure the goodness of the government ... discontent with the government is only good, in so far as it is a means of removing *real cause* of discontent [Dumaresq wrote 'dissatisfaction']'. Mill, James, *Essays on Government, Jurisprudence, Liberty of the Press and Law of Nations* (New York, 1967 [1825]), p.18.

⁵³ Darling to Hay, 9 February 1827, *HRA*, series I, volume XIII, p.98.

servants would go distances of up to five miles on the evenings the paper arrived in their district. The danger of both convicts and soldiery being worked on by the paper seemed obvious. Government 'like everything else to be preserved, must be beloved' but, argued Dumaresq, how could this be if it, and its officers were disrespectfully insulted and treated with rudeness? Darling depicted the newspapers as active fomenters of discontent working on a passive population - 'the respectable and well disposed are supine, while the Press is busily employed sowing the Seeds of discord and dissension.'⁵⁴ Dumaresq accused them of inventing unpopular measures which they maintained the government was planning to introduce, then, after thoroughly stirring up their readers, claiming the detested proposals had been abandoned because of newspaper pressure - 'and the Government is assiduously Complemented for Yielding to Public Opinion.'

Dumaresq presented the personal side of press attacks launched against individuals - 'you are personally known and pointed at as the Person alluded to and as the subject of ridicule or perhaps of reproach.' Rudeness and discourtesy towards the highest authorities destroyed respect, and this was aided by the smallness of the community and 'the almost familiar intercourse' which 'has ever been found to lessen distinction.' Dumaresq argued that authority deserved to be protected from the minority responsible for the vocal opposition. Both Dumaresq, and Darling, ascribed the source of government opposition as a small, disaffected elite.

Referring to the newspaper attacks on the Governor, Dumaresq claimed they had become so outrageous that even the opposing editors criticised each other for making 'seditious and Libellous attacks.' He pointed to the link made by the press between accusations of arbitrary behaviour on Darling's part and his military background, and their conclusion that his actions were 'the result of passionate ignorance and a hasty temperament' – Dumaresq's own discussion suggesting the newspaper barbs were touching their target. To these criticisms

⁵⁴ *Ibid.*

Dumaresq responded that 'The Records of his Government will refute the one, his deportment in Private life, will serve to Contradict the other, and it is scarcely probable that he should be precipitate only in matters of importance or in Concerns of a Public nature.'

The authoritarian nature of rule by governor was downplayed by Dumaresq; 'the real abuse of power in New South Wales can never be very formidable and needs not the Control of Hireling News Writers.' He pointed to the 'Moral Tribunal of Public Opinion in England; and Individuals will not be wanting, ready enough to employ them.' Newspaper controls would be represented by the colonial papers as 'Power over Public opinion' but this opinion was not shared by respectable colonists who looked for surer safeguards than those the libel laws and courts offered.

Dumaresq's reflections touched on another group, sure to be complaining of Darling in Westminster. Unhappy emigrants with unsatisfied expectations had demanded more from the colonial government than they had any right to claim. Their dissatisfaction was easily inflamed by the papers, 'Maxims of equity are Construed into rigour whilst proper rules of action are regarded as unnecessary restraints.' Dumaresq saw them as not realising that they were being used by those who misrepresented actions as bad and encouraged them to adopt, without great consideration, 'opinions which appear to accord and sympathise with their imaginary grievances.'

The administration had to be united in purpose and the Lieutenant-Colonel appealed for unity and the unqualified support of government officers. These matters of principal and loyalty troubled Government House. The Governor's inner circle held a tightly knit group of people, united by family ties, friendships, shared political beliefs, and firm Anglican faith. Outsiders could be repelled by this unity, seeing themselves excluded and nepotism entrenched. The newspaper attacks over Sudds and Thompson had begun the isolation of the government and

as events unfolded they felt themselves betrayed by some of the highest placed officers, from whom they should have received most support.:

Every Member of the Administration should be known and Confidently relied on, as a firm and certain adherent, and perfect unanimity on their part, would be found, to have the happiest effect, in neutralizing the Political Consequences of the dissatisfaction above alluded to.

As Dumaresq emphasized the penal nature of New South Wales, he did so with an equal belief that the government had a moral duty to perform in reforming the men and women in its charge. Darling's government was bureaucratic and moralistic. Dumaresq shared the Governor's aims, and stressed that to achieve the 'stability and *moral* preponderance of the Government, a moral ascendancy must be obtained by its officers'. For these ends government officers must exhibit 'perfect rectitude of Conduct', and any hint of shared predilections was likely to be seized upon by the prisoners to corrupt the distinctions which should exist between themselves and their overseers -

for it will be found difficult to surpass the Convicts in intelligence or Physical energies⁵⁵; whilst from the Class association I have already adverted to [of soldiers and convicts], no Congeniality of tastes or Sentiments will escape detection from the Lynx-eyed scrutiny of those, by whom these Officers are Constantly surrounded -

Dumaresq conceded that the prisoners' behaviour changed in the colony, but denied this was accompanied by a moral change - 'there is rarely *any amendment in their principles*'. Not all government officers aided in 'the work of moral reformation' - some even served as examples to avoid while others, not bad themselves, tolerated irregular conduct they should have acted to correct.

Talent, morality, and loyalty were demanded by both Darling and Dumaresq. In reaction to the appointment of mediocre sinecurists sent by the

⁵⁵ In this matter he was in agreement with the convict Henry Savery: 'it is a lamentable truth, confirmed by the experience of many years, that a more than average share of talent is to be found in any given number of offenders against the laws of their country, compared to what is met with, in others.' Savery, *Quintus Servinton*, p.307

Colonial Office, the Governor's accomplished brother-in-law appealed for the selection of officers by ability - 'men of acknowledged Talent, and the soundest Judgement'. Dumaresq also referred to the annoyance of the public officers to the reforms introduced by the Darling administration: 'Much difficulty has been experienced, in carrying these arrangements into effect, and they have been opposed, or rather they have been *obstructed*, with a jealous, but not un-natural pertinacity; arising from a predilection in favour of the former system.'

Like Darling, Dumaresq argued against a Sydney house of assembly by claiming not enough representatives could be found. He pointed out that public associations in Sydney failed from lack of support because members would not devote the time needed to make them successful. An assembly, he argued, could not count on country representatives who could neither leave their families unprotected nor abandon the supervision of their interests. A further problem, Dumaresq maintained, was the participation of emancipists - 'every Class of the Free Inhabitants would be required to be represented'. If this were permitted then the influence of the emancipists in society 'might become a preponderating one; for many of these Persons are already in affluent circumstances, and few of them want address or intelligence, to effect whatever purposes, their Ambition or their Interests, may suggest, as likely to Conduce to their advantage.' They would be biased in favour of the convicts, and prisoners 'would thus obtain a dangerous influence'. Dumaresq quoted from Montesquieu's *Spirit of Laws* - "that the practice of the Freest nation that ever existed, induces me to think, there are cases in which a Veil should be drawn, for a while, over Liberty, as it was customary to veil the Statues of the Gods."⁵⁶

Dumaresq touched on the proposals which had been made by the Governor and Chief Justice for the enlargement of the nominated Legislative Council to 15 or 20 members. He made no comment on these proposed numbers

⁵⁶ Dumaresq quoted from Thomas Nugent's 1750 translation. Montesquieu, *The Spirit of Laws*, edited by David Wallace Carrithers (Berkeley, 1977 [1748]), p.224.

but suggested that the Council's deliberations become public, to encourage the participants to scrutinise the matters discussed and to avoid 'the obtrusion of undigested or visionary schemes.'

Given the legalistic muddle over Sudds and Thompson, and the ongoing problems Darling was having with the colony's law officers, Dumaresq proposed that new laws and regulations 'should be Clear, Complete, well defined and unambiguous.' He looked to the future and made a novel suggestion:

As Laws are said to be always tainted, more or less, with the passions and prejudices of the Legislators, it is essential that their characters should be such, as to *guarantee* the purity of all enactments prepared by them. But, under the novel circumstances of Legislating for a Community, Composed as that of New South Wales: it might not be amiss to advert to the practice of Ancient Rome and Athens – where the decrees of the Senate, had the force of Law, for the space of a Year, but did not become permanent, until further ratification. Some trial of a Law might perhaps be advantageously made, before it is finally adopted – But on this subject, I write with the utmost diffidence.

To counteract the need for an assembly, Dumaresq suggested the magistrates be used to transmit local interests and needs towards the centre. Three to five magistrates, nominated in each district by the others, should compile a 'Periodical Report' on matters of interest: 'These Reports, may be of a Statistical nature, and will serve as useful, on which important calculations can be founded, as well as furnish the best and most accurate information, as to the views and wants of the distant Settlers.' Both Dumaresq and Darling suggested concessions which, they believed, might partly have satisfied the demands for representation. Using the magistrates to channel the settlers' 'views and wants' was, Dumaresq wrote, 'more *practicable*' than an assembly and would go some way towards satisfying demands for representation.

The 'reflection' represents Henry Dumaresq's outlook in 1827, given as a colonial administrator, bureaucrat, government officer - he may not have maintained all the same attitudes in the early 1830s after he had left government

employment and was a settler dealing with the Whig Governor Bourke. Darling and Dumaresq responded to the January 1827 petition with imperialist viewpoints not publicly debated in Sydney. Their arguments were presented in response to the settlers' petition and formulated to influence London civil servants. William Wentworth's speech and the settlers' petition, Forbes's comments, and Darling and Dumaresq's commentaries, offer differing accounts of the nature of the colony, and Australian colonialism. For the petition writers in New South Wales, and their Chief Justice, the new homeland was an idealised empty space waiting to be flooded with English institutions. In each of the conflicts these people ignored the vexing questions of emancipist involvement and the position of convicts and transportation in their desired state. The repetitive and conventional liberal arguments for constitutional reform deliberately neglected the most salient questions about what sort of colony was wanted, and recognition that they were demanding change which would bring to an end the penal state. Henry Dumaresq pointed to the incompatibility of English rights in a society 'in which there are conditions of People, whose rights are unequal and dissimilar.' Colourful oratory could not disguise the lack of serious answers to what should happen to the convicts and how the terrors of transportation would be maintained if the desired rights were granted, for change in Sydney meant change within the British legal system. Neither petition writers, nor newspaper propagandists, nor the Chief Justice, admitted that convicts and transportation were the main business of the colony. Those who, for whatever reasons, opposed the public sanctification of reform were silent. This lack of contention had been observed (as previously noted) during the dinnerist crisis when opponents to immediate constitutional reform, who were not members of the Faction, had not appeared to discuss their reservations at the public meeting to vote Brisbane's farewell Address.⁵⁷

Although aware of changes in the colony, Darling and Dumaresq saw the territory about them as primarily a penal establishment, requiring a moral

⁵⁷ *Sydney Gazette*, 27 October 1825.

soldiery to oversee its development and cultivate the reform of its depraved population. The colonists wanted more say in the running of the colony and the spending of revenue, they saw New South Wales as something other than a prison. Every day Governor Darling made decisions concerning the penal establishment he had been sent from London to conduct. Whereas the settlers might pretend they were not benefiting from living under a paternalistic, high-spending, and collectivist regime, Darling's view was imperial. The role of the governor, despite prestige, ceremonies of power and imperial trappings, was becoming more of a colonial manager than one of the 'Lilliputian sovereigns' who had previously governed.⁵⁸

This clash of visions was not the primary cause of the Sudds-Thompson Case – which, in its beginning, was the least 'political' of the disputes studied in this thesis. Francis Forbes wrote to Wilmot Horton about a 'political juggle',⁵⁹ Darling complained of its politicisation⁶⁰, Henry Dumaresq made it 'a Political Lever',⁶¹ and historians have generally followed this path – linking Sudds and Thompson, Wentworth, constitutional reform.⁶² The entry on Ralph Darling by Helen Doyle *The Oxford Companion to Australian History* presents the 'political' case succinctly: 'An antagonistic press – led by Wentworth's *Australian* – used the Sudds-Thompson affair to call for a more representative Legislative Assembly and trial by jury.' Brian Fletcher has disputed purely political readings of the Case and pointed out, correctly, that such an analysis 'over-simplif[ies] the situation'. Fletcher suggested that initially Sudds's death provoked real disquiet, especially in the *Australian*, and that this was the essential force behind the matter.⁶³

That Sudds and Thompson occurred in November and December 1826, and a petition for constitutional reform was passed in January 1827, was co-

⁵⁸ R.M. Crawford, cited by Stuart Macintyre, 'Australia and the Empire' in Robin W. Winks (ed.), *Historiography* (Oxford, 1999), p. 163.

⁵⁹ Darling to Wilmot Horton, 15 December 1826, *HRA*, series I, volume XII, p. 764.

⁶⁰ *Ibid.*, p. 761.

⁶¹ Henry Dumaresq to Edward Dumaresq, 23 December 1826, AOT NS 953/315.

⁶² See entry on 'Ralph Darling' in Davison, *The Oxford Companion to Australian History*, p. 172.

⁶³ Fletcher, *Ralph Darling*, p. 249.

incidental. A public meeting was held, and a petition was sent to London, because that was the time when colonial action was needed to influence the House of Commons debate on the future of the colony after the 1823 Act expired. It was also just over twelve months since Sir Thomas Brisbane had set off for England promising to bring about great changes, and news was now coming back of how little he had done. Chronology, not Sudds and Thompson, brought on the discussion of constitutional change in January 1827. Although the Case preoccupied the newspaper editors and the Governor throughout December and into early January the topic faded away before the public meeting was held. As Brian Fletcher suggested, if the political had been the most important element then Sudds and Thompson would have been kept going until the meeting.⁶⁴

* * * * *

The Sudds-Thompson Case was temporarily over in mid-January 1827. In these colonial controversies the stirred passions would die down until a ship returned from London carrying correspondents' comments on what had taken place years previously. Then again the old topic would stir emotions and pens.

Laurence Halloran and Robert Wardell had begun the Sudds-Thompson Case; William Wentworth's role was minor, and is practically undocumented.⁶⁵ Wardell's attention had already been drawn to the treatment of the two soldiers when he received news of Sudds's death from Laurence Halloran. Wardell's startled reaction brought forward some astringent criticisms which were answered by the Government. Wardell seemed satisfied with these explanations, but his acceptance turned to anger when he assumed that Government House was attempting a cover-up. The Case began in the *Australian* on 6 December when

⁶⁴ *Ibid.*

⁶⁵ A contrary view is expressed in C.H. Currey's article on Robert Wardell in the *Australian Dictionary of Biography* - 'When in 1827 the death of Private Sudds was exploited by Wentworth for political purposes, the *Australian* joined in the hue and cry'. See 'Robert Wardell' in *Australian Dictionary of Biography*, volume II, p.571.

Wardell impugned the probity of the Governor. Wardell interpreted the sailing of the *Corsair* as a secretive attempt by Darling to present a dishonest and one-sided account of the incident in London; on the same day Halloran lashed out at having his word questioned in the letter from 'A Subscriber'. Their combined attack drew in Darling's latent opponents – on the same day Wardell hinted that William Wentworth was also angered by the sailing of the *Corsair*.

The friendship of Henry Dumaresq and Robert Wardell was destroyed by the Case. Although it has left no written evidence, its ending undoubtedly played a part in the unfolding bitterness. In the letter to Edward, written just before Christmas, Henry Dumaresq suggested his brother should cancel his subscription to the *Australian* and that he himself would no longer pay for 'impertinence'.⁶⁶ It was a telling word choice. Wardell, the barrister/editor friend of the Private Secretary, had taken his paper beyond a mutually understood line of respect – from which there was no turning back. Henry Dumaresq's relationship with his brother-in-law the Governor was respectful, and influential. As Private Secretary he drafted the Governor's correspondence, and some of Darling's more colourful prose may have originated with Dumaresq. Edward wrote of his brother (probably after Henry's death), that he had been 'one of the principal among the *Rulers* of New South Wales – In fact if not by office & this fact was well known & understood'.⁶⁷ Within Government House there was a strain of personal anger at Wardell's new enmity. Tory Dumaresq and Whig Wardell had enjoyed a social relationship since the Colonel's arrival in Sydney. Their friendship aided the government and the newspaper editor, their enmity soured the break that took place.

In Sydney the butts of newspaper ridicule were known to the rest of the population, the victims also understood subtle newspaper references of which others in the community were unaware – and of which later generations are

⁶⁶ Henry Dumaresq to Edward Dumaresq, 23 December 1826, AOT NS 953/315.

⁶⁷ Draft document by Edward Dumaresq attached to a previously cited letter - Henry Dumaresq to Edward Dumaresq, 21 March 1827, AOT NS 953/315.

oblivious. When Wardell's paper accused a Government House writer of being 'unmanly' an insult was intended by its writer and understood by its quarry.⁶⁸ Both Dumaresq and Thomas de la Condamine, the Governor's aide-de-camp were possible authors of 'A Subscriber'. Given Dumaresq's ability with a pen, and his previous use of a newspaper letter to criticise Wardell, it was probably meant for him. Personal matters drove the beginning of the conflict. Wardell's friendship with Saxe Bannister had ended in a duel, his friendship with Dumaresq would go the same way.

As the Sudds-Thompson Case was beginning Wentworth, for much of the time, was a bystander—when he did react it was in talk. Darling brought on his own impeachment by listening to Sydney rumours that Wentworth was going to impeach him, and pushed Wentworth to do so. When Wentworth did complain of Darling to the Secretary of State he asked the latter not to proceed against the Governor until he had sent a further statement, then for twenty-seven months did

⁶⁸ *Australian*, 13 December 1826.

That an accusation of unmanly was a potent insult appears in this extract from an 1831 poem by Laurence Halloran. The victim was Thomas de la Condamine and the reference to nuns refers to the women prisoners at the Parramatta Factory –

Behold a *smock-faced* stripling next advance,
 Spawn of a mongrel family - *from France*;
 Whose mincing gait, and beardless chin perplex
 Even sage Scrutators, - to define his sex,
 Who deem a joarneyman [sic] of nature's trade,
The Thing in forming, a mistake had made;
 And mixed the compounds, by some accident twirl,
 That mould a *boy* with those that frame a *girl*, -
 Which strange amalgama's eccentric plan,
A dandy forms, - but cannot make a man!
 Flippant and pert, - with wealth and place elate,
 The *mannikin* assumes the airs of state;
 Apes his stern Lord; and with a Lacquey's pride,
 Less prosperous worth, and honor dares deride!
 Yet does this ep*c*ne [epicene], - this minion, - still
One office, suited to *its* gender, fill;
 O'er cloistered nuns, and vestals he presides,
 And, as a *visitor*, their studies guides;
 And, sooth the appointment was a humorous whim,
That vestals may learn *chastity* from *him*!
 Yet, 'mid the servile croud [sic], that through the court,
 (The wise man's pity, and a cynic's sport,) *This Thing*, distinguished a *la m*l*t*re* [militaire sic],
 Laced trowsers wears, who *petticoats* should wear!

Australian 14 January 1831, reprinted 14 October 1831.

nothing. He would excuse this as 'natural indolence of indisposition' which may be true, and an implausible belief that the Governor's guilt was so blatant that nothing further was necessary to ensure his recall.⁶⁹ Brian Fletcher suggests that in face of the government defence Wentworth realised little credence would be attached to his call for impeachment, and without the support of the newspaper editors, who were indicating the matter was closed, 'there was every prospect that Wentworth would be isolated.'⁷⁰ To advance the feelings that had arisen toward a serious impeachment of Darling what was needed was legalistic pen and ink work. For the matter to proceed words in Sydney were useless, serious legal arguments had to be raised.⁷¹ But this did not then happen.

The Case burst out again in 1829 – when William Wentworth prepared a twenty-five thousand word indictment of the Governor, though with little relevance and less substance.⁷² New enemies of Ralph Darling surfaced, such as Captain Robert Robison (who has only been mentioned as arriving in the colony with the Royal Veteran Companies in September), who built on the matters now raised and contributed fresh points of friction. The case was played out like three acts of a comedy/tragedy. Historical events represented in theatrical metaphors are usually wide of the mark. In this case the succeeding phases of the case do seem to be succeeding acts in a drama – the first in 1826, the second in 1829, and the third in 1835 when a parliamentary committee of inquiry in London brought down the final curtain when it cleared the Governor of any wrongdoing. Matters deteriorated so badly that by the time of the inquiry the committee was instructed to investigate Darling's personal conduct in regard to the granting of crown lands, the handling of the public newspapers, the case of Captain Robison, and 'the

⁶⁹ Wentworth to Murray, 1 March 1829, *HRA*, series I, volume XIV, p.801.

⁷⁰ Fletcher, *Ralph Darling*, p.248.

⁷¹ In December 1827 Dr Henry Grattan Douglass, not a reliable witness, informed Darling that he had never heard impeachment mentioned by Wentworth, and suggested that that rumours of it were 'an expression of Sound and Fury, signifying nothing'. Some months later Darling heard suggestions that he was carrying copies of Wentworth's impeachment charge to England. Douglass to Darling, 27 December 1827 *HRA* series I, volume XIII, p.710; Darling to Hay, 16 February 1828, *Ibid.*, p.789.

⁷² It was the arrival of Wentworth's impeachment document in London that caused the Colonial Office to request an opinion from the Solicitor General.

alleged instances of Cruelty towards the Soldiers Sudds and Thompson and other persons'.⁷³ However, key characters in one part of the drama disappeared between acts and were replaced by bitter replacements who came forward with new matters to dispute – perhaps more realistically, the Sudds-Thompson Case was three one act plays based on a similar theme.

⁷³ *Report from Select Committee on the Conduct of General Darling while Governor of New South Wales, with the Minutes of Evidence, and Appendix.*

PART SIX

Conclusion – The Lessons of Chronology

Chapter Seventeen

Chronology and grievance

A quotation from Michelet is placed above the Introduction to this thesis - 'l'histoire, c'est le temps'.¹ That 'history is time' has influenced the methodology within this commentary. The citation comes from Book III of the *Histoire de la Révolution française* as Michelet sets out 'the method and spirit' guiding his writing. It is a spirited attack on written histories which flick through the past only seeking present concerns. The phrase also has a second meaning of respecting the contemporary time frame in historical narration. This work has attempted to maintain chronology in narrating three episodes of colonial history where men were in conflict over their present and future rights, and with the penal government they lived under. In doing so it suggests some differing interpretations of men and events. Governor Darling was nasty about William Wentworth. But rather than illustrating Darling's unpleasant, frigid, authoritative character, study of the time frame reveals this distaste as the privately expressed riposte of a man attacked by an exasperating enemy – the cause of whose enmity he did not quite know.

Research, chronology, and narrative, the simplest tools of historical methodology, suggest that many of the earlier histories, dealing with the period 1819 – 1827, are no longer acceptable. In his 1995 history of law in Australia, *An Unruly Child*, Bruce Kercher remarked that 'Currey's [1968] biography of Forbes ... is a cornerstone of work in this period.'² The comment is unfortunately true. Currey's comparatively limited range of sources, and uncritical attitude towards his subject, has deterred few writers.³ Where this thesis has touched on the work

¹ Emphasis as in original: Jules Michelet, *Histoire de la Révolution française*, tome I (Paris, 1961 [1847 - 1853]) p.291.

² Kercher, *An Unruly Child*, p.221.

³ Likewise Currey's articles in the *Australian Dictionary of Biography*.

of earlier historians, for example, A.C.V. Melbourne on constitutional history and William Wentworth, R.B. Walker on newspapers, Manning Clark on the whole period, C.H. Currey on Francis Forbes, reservations have arisen and been noted. Modern students have easier access to a greater range of primary sources than those used and considered by the earlier writers, whose work now has as much to say about the period in which they were written as the period they describe – their books do hold fascinating clues and guides to conducting research but also errors and questionable assumptions, which continue to be incorporated into modern works. Any history constructed on these foundations is flawed.

Similarly, this thesis argues that historical analysis using an anachronistic premise of exclusive versus emancipist is irrevocably defective. Even allowing that ‘exclusive’ is an historians’ word its use is still challenged, because it holds no common meaning for its users or readers. Approaching the 1820s without this interpretative straitjacket reveals quite different narratives.

In attempting to respect chronology in historical research past and present technologies clash. In scanning newspapers on reels of microfilm the way they were originally read, and how they were written and produced, disappears. We easily lose sight of the flow of information that collected in the editorial office, which could amend or completely change the events being recorded within the same issue. In dealing with newspapers and books it may not be necessary to smell the printers’ ink, but it is certainly essential to know how they were typeset and prepared for publication and other matters, such as why the advertisements always appeared on certain pages and why foreign news and snippets took a fixed amount of space. Likewise in our reading, as we trace a topic that interests us, the importance of advertisements and notices of ship sailings and general announcements to the men and women whose society we are seeking to enter may disappear. In the case of William Charles Wentworth’s 1819 book the technology of early nineteenth century book production has clearly fixed discernible changes in his attitude towards John Macarthur.

It may not be possible to display the kaleidoscope of events and impressions which surrounded the people being studied, but it is desirable to show that the political or social stream being mapped did not totally occupy all settlers to the exclusion of all else. Samuel Bennett, a nineteenth century historian, despite a very modern concern for 'class animosity', made a valid point when he suggested that during the Darling period, despite the *Sturm und Drang*, life went on:

fortunately class animosity and political differences – although they excite a great degree of public attention – do not very seriously interfere with the practical affairs of life; and during the time they rage most violently things generally progress much the same as usual.⁴

The political storms and passionate disputes should also not disguise the great stream of shared attitudes and values of the colonists. The extremist language of the Retaliation Club had been decisively rejected by Robert Wardell.

Competently indexed transcriptions of original manuscripts are invaluable modern historians' tools, and yet we lose the subtlety of approach which using original materials offers. We are not aware of whose handwriting we are looking at, and miss the sometimes telling corrections – that Edward Eagar crossed out 'Gentlemen' and inserted 'Gentry' in a document intended for John Bigge was important. We are also unaware, when using these useful collections, how much and what has been left out or the possibility that words or initials have been mistranscribed. There are also considerable dangers that editors' annotations are wrong, opinionated, or otherwise misleading.

Piecing together historical evidence the creation of anachronistic argumentation seems unavoidable. The historian creates discussions which never took place by assembling contemporary pieces of paper not intended to be seen together - melding letters, despatches, diary entries, and other documents that were private and hidden from the eyes of most contemporaries. As disparate

⁴ Samuel Bennett, *Australian Discovery and Colonisation: volume II – 1800 to 1831* (Milton's Point, 1982 [1865]), p.625.

pieces of 'evidence' are put together new arguments are made – while holding contemporary opinions the argumentation is artificial for they lack the rejoinders their authors would have made if challenged. In dealing with these source materials it is always easier to note the bitterness of controversies and not always notice, or draw attention to, the shared attitudes on most issues.

In the period of this thesis the penal method of government was under challenge, but the champions of constitutional reform hardly seemed to grapple with the problem of the convicts. Some of the supposed champions of the emancipists, for example Wardell and Wentworth, showed no particular liking for the prisoners. Perhaps Sudds's death particularly shocked Robert Wardell because Sudds was a soldier – a convict death may have been less chilling.

The future concerned the settlers, but they were not the only ones involved. New South Wales was a solution to an imperial penal problem, and as the settlers called for political rights they offered no thoughts on how these would conflict or coexist with the penal establishment. As their calls for rights became louder the more convicts arrived - of all prisoners transported to Australia three-fifths were shipped after 1830.⁵ The Colonial Office response to demands for constitutional reform during this period were, if anything, measured – in his 1836 book *The Statesman* the colonial office civil servant Henry Taylor referred to 'the sense of responsibility for inaction'.⁶ It was a subtle political and administrative sensibility which Ralph Darling, and his staff, lacked. Being less ready to immediately react to provocation may have saved the Governor from entering the quagmire of the Sudds-Thompson Case. The historian Helen Taft Manning pointed to the use the political opposition in Britain made of colonial discontent. No doubt useful in Britain it brought no clear gains to the colonists:

Whigs and radicals, backed by the press and partisan journals, found, in the alleged extravagance of the colonial establishments

⁵ A.G.L. Shaw, *Convicts and the Colonies: A Study of Penal Transportation from Great Britain and Ireland to Australia and other parts of the British Empire* (Melbourne, 1977 [1966]), p.148.

⁶ Henry Taylor, *The Works of Sir Henry Taylor: volume IV: Notes from Life; The Statesman* (London, 1883 [1836]), p.262.

and the accusations of tyranny brought against the military men who served as governors in Canada, South Africa, and New South Wales, excellent sticks with which to beat the tory ministry in the days of its decline.⁷

Opposition support in London flattered the self-importance of the colonial perturbators, but did not bring the changes they sought. The men in Sydney channelled their demands through Whig/radical politicians, and neglected cultivating Tory supporters – who shared their respect for traditional English liberties. The political demands from New South Wales were deliberately subsumed into British party politics. More nuanced appeals for change, and the cultivation of both opposition and government members, may have resulted in Tory concessions – playing the party game in Britain brought few positive results.

To bring about change in the colony it was not necessary to demonise the Governor and his administration. Both Ralph Darling and Henry Dumaresq suggested, to the Colonial Office, political compromises which would have taken the colony further in the direction desired by Wardell, Howe, Wentworth, Hall, and Eagar. This was negative support put forward in response to aggressive colonial agitation. More astute men would have sought the administration's positive support for their claims. Raucous colonial disputes polarised attitudes in the colony and, even as they supplied arguments for the opposition to flay the London government, possibly delayed real reform in New South Wales.

Individuals marked the period 1819 to 1827 and this thesis has suggested a reappraisal of at least six men.

Edward Eagar generated litigation and disputes, and produced hundreds of pages of political writing. The work was exceptional, and his opinions have influenced later perceptions of the colonial state. Eagar's invented word 'emancipist' has become an essential element used for describing and discussing this period of convict colonialism – although little attention is paid to considering that this too inclusive terminology was intentional verbal legerdemain. If his

⁷ Helen Taft Manning, 'Colonial crises before the Cabinet, 1829 – 1835' in *Bulletin of the Institute of Historical Research*, volume 30, 1957, p.43.

authorship of the 1824 edition of William Wentworth's book is accepted, and this volume added to his writings, the entirety presents a unique and critically coherent view of early colonial society.

Laurence Halloran is the most considerable literary figure of the 1820s. His output of poetry and prose was considerable, and his impact as an 'irritable' controversialist and polemicist was significant. Once aware of Halloran, the historian finds his creative presence inescapable; he could have written almost anything published anonymously by the Sydney newspapers – on either, or both, sides of any controversy simultaneously. He is, for example, a possible author of the newspaper letter signed Betsy Bandicoot (and other similar pieces published at the time) which Manning Clark found had 'that magnificent, vulgar, cheeky confidence of the land they lived in'.⁸

A myth has grown around William Charles Wentworth, and yet he is surprisingly elusive. He did not write the 1824 book which appeared over his name, and little if anything for the *Australian* at the time he was a proprietor. He was neither 'a man of the people'⁹ nor the originator of the Sudds-Thompson Case. Even as Wentworth proposed allowing the participation of emancipists in a colonial assembly, property qualifications would have severely limited their presence as representatives.¹⁰ Granting representative government to New South Wales on the terms requested in the 1827 petition would have passed power to the men of property. William Wentworth supported *wealthy* emancipists.

Robert Wardell, not Wentworth, was the force behind the *Australian*, and the extent of their personal friendship is problematic. Wardell, not Wentworth, is the key figure in what took place during December 1826, he used the death of Sudds to reassert the *Australian's* reputation as an opposition paper. Despite Wardell's prolixity, he remains an ambivalent figure. Little is known of his life in

⁸ Clark, *A History of Australia*, volume II, p.157.

⁹ Davison, *Oxford Companion to Australian History*, p.678.

¹⁰ In suggesting qualifications for a future assembly the 1827 petition proposed a property qualification of one thousand acres 'or more' for representatives, and that the electors be limited to freeholders or householders of £10 per year. Darling to Bathurst, 31 January 1827, *HRA*, series I, volume XIII, p.57.

England, and no comparative study has ever been made between his London newspaper, *The Statesman*, and the *Australian*. Surely editing a Whig newspaper during the Queen Caroline Affair was an all too appropriate apprenticeship for conducting an anti-Darling newspaper.

Francis Forbes received a formidable tribute in C.H. Currey's biography. In exploring the malignity which had been attached to the name of Ralph Darling Brian Fletcher suggested New South Wales' first Chief Justice was a more human figure than Currey's study allowed – a proposition contested by J.M. Bennett when issuing his collection of Forbes's letters. This thesis has put forward a critical reading of Forbes's behaviour in 1826. That year the Chief Justice kept knowledge of his draft of a new Bill to replace the 1823 Act from the Governor, he gave wrong advice to the Legislative Council and did not correct this when he became aware of his error, he broke his oath in revealing Council matters to Robert Wilmot Horton, his attitude in court in the case of his own dog suggests impropriety. Some ten years later a further incident, never before used, suggests personal dishonesty, or at least sharp practice for personal gain. The source is Henry Dumaresq writing to his brother Edward on 4 January 1836 -

I think I have mentioned my Land Contests with Mr Forbes. After these had passed, and the disputed Land his – “au moyen” de 23/- per acre. He made a proposition to William [Dumaresq] that we shd. enter into Bonds, not further to oppose Each other in the Sale or purchase of Lands, within certain defined limits. This was so reasonable and fair that I immediately assented. His Honor lost no time in sending a Bond drawn by himself. His promptness was amazing! Having thus fettered me, He has forfeited the Deposit Money – and the Land is again for Sale – He will now, being unopposed, get it at 5/- per Acre. “Rob us thy Fathers Exchequer Hal.” His Honors Morals, like “Kind Jacks”, are loose!¹¹

Henry Dumaresq himself deserves further attention. He was one of the finest colonial letter writers, and his prose style is sometimes discernable in letters signed by his brother-in-law. His position as the Governor's Private

¹¹ Henry to Edward Dumaresq, 4 January 1836, Mount Ireh Papers, IIA/1a.

Secretary was influential, although to exactly what extent is difficult to establish. Being present at the end of Brisbane's term of office, and participating in the latter's farewell dinners, gave him a perception of the colony which influenced his advice to the new Governor. His absence at the time of Sudds's and Thompson's public punishment deprived Darling of his advice and support, and his return just as news of Sudds's death was being published may have led to a too clever attempt to answer newspaper criticism.

Historian J.J. Eddy observed of the 1820s that '[p]olitics had, in fact, come to Australia; an embryonic politics of interest, faction and bitter intensity – but real politics just the same.'¹² Embryo politicians had also appeared. In their adversarial and oppositionist politics there was an absence of a considered and sustained discussion of the future state; the men who directed the public discourse had little to say of the future beyond platitudes and generalities. Their wants were modest British rights. Their claims were neither new, nor original. The novelty, and threat, lay in the inclusion or representation of the emancipists – although within that generic term lay ranking divisions as wide as any in the colony. The collectivist state which granted the settlers estates and supplied convict labour was too necessary in this period of establishment to be seriously questioned. 'A new Britannia in another world!' was emotive in New South Wales, but may have held suggestions its author never intended. If realistic, rather than poetic, it meant the end of the convict state from which so many had gained, and continued to prosper. One would not look for great rhetoric from the ex-prisoners, but nor did any come from the free settlers. Their campaigns for political reform were directed by resentment, and individuals, often courtroom advocates, took their adversarial manners into the political arena. Those in their way were not conciliated but attacked. The desired rights seemed self-evident, in laying claim to them it was enough to complain of present oppression and injustice without

¹² Eddy, *Britain and the Australian Colonies*, p.94.

detailing the political structures and principles of a future state. The politics they practiced, with skill and determination, were the politics of grievance.

Warrane

15 May 2002

Appendices

Appendix One

Act No. V, 7 Geo. IV.

Section 4. And be it further enacted with the authority aforesaid That in all cases in which the Courts of King's Bench Assize and Gaol Delivery or of Quarter Sessions in England are authorised to punish offenders by imprisonment and hard labour it shall be lawful for the Judges or any one Judge of the Supreme Court and for the Justices in Quarter Sessions in the said Colony to condemn offenders of the same degree to serve the Governor or Acting Governor for the time-being or his assigns in New South Wales for the same time and under the same rules as if such offenders had been transported from England or to imprisonment and hard labor or to hard labor in irons on the high roads or on other public works in the said Colony and the said Governor or Acting Governor shall order the said sentences respectively to be carried into effect upon reports thereof being made in the usual manner by the Judges or any Judge of the said Supreme Court or by the Chairman of the Sessions respectively.

Section 5: Provided that all persons born in the said Colony or who have come into the same free shall for their first offence being of the degree as aforesaid be liable to imprisonment and hard labor within prison walls only or be kept in the ordinary employment of the Crown or of the assignee or assignees of the Governor or Acting Governor and to be subject to the summary jurisdiction of Justices of the Peace in like manner as if such persons as last aforesaid had been transported from England.

Section 6: And be it further enacted That it shall be lawful for the said Governor or Acting Governor by an Order in writing registered in the Office of the Secretary of the said Colony to withdraw any person or persons now or hereafter

to be transported or sent to any Penal Settlement or place as aforesaid and to employ him her or them either in irons on the public roads or works or in the ordinary service of the Crown or to assign him her or them to settlers or others to be dealt with in all respects as if he she or they were under sentence of transportation from England.

Sources:

HRA, series I, volume XII, p.839.

Copies of the Laws and Ordinances passed by the Governor and Council of the Colony of New South Wales: 1826, 16 May 1828, p.14.

Appendix Two

To the Editor of The Australian

Sir,

A letter published in two Newspapers, and signed a "Subscriber", impeaches the veracity of the statement in your Paper, of the 29th alt, respecting the deceased Joseph Sudds, late a private soldier in the 57th Regiment. The parties who sent that statement to you, (for it was not the act of an individual, but of several persons who commiserated his sufferings,) will verify it, if necessary, on oath. In fact, it is notorious, and was witnessed by more than twenty spectators; among the rest, by the under-gaoler himself, that when the wretched victim was conveyed from gaol to barracks, to receive his military punishment, he was not able, without assistance, to descend the flight of steps leading from the cells to the prison gate; and on his return, he was equally obliged to be supported by two men. And it is not less notorious, that when he was conveyed from prison to the hospital, on Sunday evening, in a cart, he was in a dying state, so that the motive of such removal could not be supposed the hopeless object of benefit to the patient, but the evasion of a Coroner's Inquest.

It is an unjust insinuation, that the parties who took an interest in this man's fate, or in his comrade's torture, (whose repeated declaration was, that he could not sleep in any position from the effect of the irons, the spikes projecting from the collar, and their contraction of his body,) have any wish to malign, or discredit the constituted authorities, for whom they feel, and will always manifest due respect and becoming subordination. But if a cruel, or unjust act be publickly perpetrated by order, or even by

tolerance of persons in authority; the very circumstances of their rank and power, renders the precedent more dangerous, and more strongly demands notice and animadversion.

A Subscriber attempts to justify the late illegal severity, by reference to the desertion which took place from the British Army in America, (in an enemy's country, and in time of war,) and which certainly subjected such deserters to the penalty of death by Martial Law, is at first sight, futile and nugatory, as bearing no analogy to the present case.

It is probable, as it is stated, that occasional applications for commutation of a sentence to a penal settlement, to that of labour on the high roads. But, be it remembered, such commutation is always understood to comprise a deduction of one half of the term of suffering.

Sudds real name is "Jones", a native of Bradford, Wiltshire, where he left a wife and family.

We are Sir,

Your very obedient, humble servants,

QUINQUE

P.S. Perhaps it may not be opportune to state, that Thomson found means to break both the chains that connected the iron-collar with the basils on his ancles, declaring he could not sleep, owing to the contraction of his body, which they occasioned. The under gaoler connected the separated links by means of a handkerchief, which Thomson protested he would again burst, as he could not endure the total privation of sleep, arising from the torture they inflicted; and he added, with tears of agony, that he would prefer immediate death, to such a protracted suffering.

Of these facts, there are many witnesses ready to confirm their authenticity. Q.

Sydney, 2d December, 1826.¹

Source:

Australian, 6 December 1826

¹ *Australian*, 6 December 1826.

Appendix Three

Letter from Henry Dumaresq to Edward Dumaresq, 23 December 1826.

Attached to the letter was an outline of the Case, and copies of relevant

Government Orders:

My dear Ned

You will have seen by the Newspapers, that an attempt has been lately made, by a certain Party here, to raise a clamour and excite the Public feeling on account of the death of Sudds – The Accompanying Statement, Copies of which have been forwarded Home, will put you in possession of the precise nature of the Case – and the General orders which have been issued, from time to time, will shew that some strenuous exertion was necessary to awaken the Troops to a more proper Sense of the degraded Condition of the Convicts, and the difference between their situation and that of this abominable Class -You will see how *purely accidental* and *perverse* the death of this rascal was – and the *dash* of fatality, which enabled him to shuffle off his Dropsical Carcase to the regions below, just at the moment, some event of this sort, or of any other, was wanted to serve as a Political Lever – and assist Certain Parties here, to thrust their ridiculous pretensions, into the consideration & favour of Parliament, previously to any discussions on the New South Wales Bill – You will have perceived from the tone of our Journals, that some notions are entertained, or rather that some preposterous ideas are proclaimed, as to the fitness of this Colony for the free & popular institutions of the Mother Country – A Party here, of the most ignorant & infamous description amongst the various grades of vice our Modern Romuli can boast – Cry aloud for their *Rights* – God help them, say I – they

should shudder when they think of them – for such a Boon would go nigh to depulate this flourishing Community, and more than one half our loving subjects would be hanged at their own solicitation – “Catso”² – What a haul the Devil would have – and what a Jubilee for the Demons, who were *less* fortunate in *obtaining their* dues, than our worthy wights have been –

When I first heard them talk of *Rights* and this notion struck me, “I laughed one Hour by the Dial” – There would be a thousand Boat Loads of Devils sent to reinforce his Satanic Majesty, at one go – The worst of this however, has been, that we have been obliged to guard by every possible means against the misstatements and exaggerated accounts that doubtless have been sent Home – as the case is *just one* of those, to work on the sensative [sic] génius of *modern John Bull*, and if not contradicted, would act like Ginger, on our Cock-tail Philanthropists – who would go off, with their Heads up – and run like real Devils, until they had done some mischief. We have written *volumes*, and there never was such a Budget of manuscripts, despatched from this office as is taken by the Regalia – The Lord help the readers – You will observe that the Australian appears to have broken loose, and I shall, from the end of this Year, discontinue my three Setts [sic], - after all – the Paper Contains no information, and I have no idea of paying for impertinence ...³

Source:

Henry Dumaesq to Edward Dumaesq, 23 December 1826, AOT NS 953/315

² Slang 1620 human ‘membrum virile’ also exclamation; in 17th century rogue, scamp.

³ NS 953/315, Henry Dumaesq to Edward Dumaesq, 23 December 1826.

Appendix Four

Extract from William Wentworth's speech 26 January 1827:

But as respects the present Legislative Council – what benefit have they been to the Colony – they certainly have the power of making laws, aye, and capital offences too. If you refuse to pay tax on tea, then pray make it felony without benefit of clergy. The council has now been in existence for three years and a half. Some laws it has passed to be sure; and one which has legalized all the rascally charges and exactions, (hear, hear) and established a system of excise, an incorrigible set of spies, perjurers, and cutthroats amongst us; (cheers) it has raised the hand of neighbour against neighbour, iniquities not by any means necessary, considering our moral condition. It has passed 14 or 15 laws – Acts of Indemnity, to white wash a good many persons who wanted it (hear, hear, and laughter.) [sic] Now a'day's we have new fangled laws – licencing laws – an odious system of excise introduced. I do not blame the Council for legislating; a power has been delegated to its members, which they do not know how to employ. I do not blame or quarrel with them; for they are entitled to the thanks of the community for having done no more. Then, Gentlemen, we have a thousand little boards; and all the intelligence they convey finds its way, I suppose, into one snug corner – one common centre – which is deposited, to be made use of when the pleasure of his Excellency shall think fit. Gentlemen, the present Government always remind me of the spider; which, by the use of its web, collects all matter of information it can, and brings it to one common centre – The recommendations are then extracted and made into a law after. I feel, Gentlemen, that badly as things have gone on lately, they will go on much worse, unless the Prayer contained in our Petition, this day, be acceded to (hear, hear, hear.) -

Source:

Australian, 31 January 1827

Appendix Five

In June 1971 S.K. Proctor published 'Henry Dumaresq on the Sydney Press in 1827' in the *Journal of the Royal Australian Historical Society*. Proctor's text comprised about half of the document which has never been published in its entirety.

Reflections suggested by the Address voted at the late Public Meeting in New South Wales and some Proceedings subsequent thereto.

The Free Institutions of the Mother Country are demanded.

I think it may be assumed as an Axiom in Civil Polity that no Country is fitted for the unrestricted admission of the Free Institutions of England, in which there are conditions of People, whose rights are unequal and dissimilar.

In New South Wales, the same Laws will not be applicable to the Bond and the Free; and the greater proportion of the Community must be governed by the Regulations especially suited to the Condition of Felons, the careful Provisions and rigorous application of which will alone supply the place of virtue.

It seems absurd to talk of the 'inherent and inprescriptive Rights of Englishmen'. These 'Rights' have been forfeited by the Emancipist and Prison Population of New South Wales, and the Emigrants voluntarily surrender so much of them, as is inconsistent with the structure of society there; for advantages, it may be presumed, they consider as equivalent to the sacrifice.

They have, at their own option, placed themselves under the protection of a Government, the Ordinances of which have been framed principally with a view to control and reform Criminals whose vices the English Laws had been found unequal to repress; and I cannot admit, they have any just cause of complaint, if constrained to submit to inconveniences this state of things may originate.

The inapplicability of the Popular Institutions of the Mother Country, to the Colony of New South Wales, holds good, with peculiar force as regards the Freedom of the Press.

There are many questions it is dangerous to discuss in that Country and a spirit has already been kindled, by licentious Publications, which will become unsafe, if not checked, by fair and temperate measures; and it will be needless to attempt to subdue or remove it, so long as the existing cause continues in activity.

Obstructions, it is evident, may be offered to the operations in detail, of Government, which possess and deserves the fullest confidence of the Community at large; and the Press may be employed in directly and efficiently exciting to those obstructions.

The Opposition Papers in New South Wales do not confine their strictures to the measures of Government, but interfere in the most ordinary details of the Public Departments – they espouse the Cause of any Officer or Clerk who may be reprimanded for remissness or dismissed for malversation.

It is said by the Advocates for the unlimited Freedom of the Press that the end, which is sought to be obtained by allowing anything to be said in Censure of the Government, is to ensure the goodness of that Government and that discontent with the Government is good, in so far as it may be the means of preventing, real Cause of dissatisfaction.

In New South Wales however, it must be remembered that, from a principle inherent in the structure of the Colony, a greater proportion of the Population considers the Government only in the odious light of Task Master and Oppressor, and cannot be expected to feel content with it, or be satisfied with Regulations framed almost wholly with the view of restraining their favourite, but vicious propensities. This natural and obvious cause of dissatisfaction on the part of the Prisoners is considerably augmented by the circumstance of the Service of Government being perpetually held out to them *in 'terrorem'*.

If a Convict misbehaves, he is menaced by his Master with being 'returned to Government employ' – and it cannot be denied that there is a strong necessity for the establishment of some feelings of this description as a requisite auxiliary in aid of the difficult and irksome task of exacting involuntary labour from Persons so averse to the habits of industry.

Can Men under the influence of such impressions be supposed to feel well affected towards the Government? Or love what they are taught only to dread? Or can it be doubted, that Publications, operating on this inflamed state of mind, may excite them to disturb the tranquillity of the Colony.

Those who have witnessed the change which has taken place in the Department of the Convicts and who have observed the progress of their pretensions give way to the most gloomy forebodings; and without presuming to judge how far these apprehensions are justly grounded; it may certainly be affirmed that, if final results are to be argued from practical consequences, the spirit which has been engendered will eventually terminate in turbulence and mischief. Irritable and susceptible as these men are rendered by their sense of moral and political degradation [sic], it would require the exercise of a nice discretion to expose, with safety, even instances of unnecessary rigour. But what must be the state of things, when imaginary evils are perpetually held up to their detestation, and they are constantly exhorted to resistance through the medium of the Press, which ministers directly to their Passions and endeavours to augment their discontent by irritating and disquieting exposures of suppositious grievances.

The safety of New South Wales depends on the separation and disunion of the Convicts, and no resistance to the Government can be effectual unless it is general; to be general it must spring from a general Conformity of opinion, and a general knowledge of that Conformity. The convicts being for the most part widely distributed and remote from each other, this effect can only be produced, and an impulse given to it, by means of a prostituted Press or a Journal such as the 'Monitor' which is emphatically and appropriately termed 'a Convict Newspaper'

— by such means only can any very extensive Communion of sentiment, or unity of purpose be obtained.

The Military, as well as the Prisoners, are constantly seen reading the Opposition papers; and I have been assured by Settlers, that they find it impossible to prevent their Assigned Servants from going, some of them a distance of Four or Five Miles on the Evenings when the 'Monitor' reaches their neighbourhood, for the purpose of perusing its intemperate Columns.

The danger to be apprehended from the feelings of the Convicts being imbibed and participated by the Soldiers is so apparent that it cannot require illustration. But, it may not be superfluous to remark that a greater disposition to improper intimacies prevails than is consistent with discipline and the Military Character.

Now Government, like everything else to be preserved, must be beloved, and what can be expected from Soldiers, or others, who are thus in the habit of hearing and seeing the Government reviled, its Public Officers spoken of with insulting disrespect and alluded to with the utmost rudeness of Personal reflexion?

Or, what good can be effected, if Public Esteem and Confidence are undermined by unremitted efforts to degrade and lessen Authority in a Community where Passions are so much more readily transfused than virtues?

It is a common trick with the Editors of the Opposition Papers to announce that certain obnoxious measures are contemplated by Government, and their Comments on these supposed intentions are always such as are calculated to excite distrust and alarm.

The Public is kept for some time in a state of suspense and uneasiness; but, when it suits their purpose, these News Writers assert with the utmost effrontery that the intended measures have been abandoned in consequence of their Editorial stricture; and the Government is assiduously Complemented for Yielding to Public Opinion.

I am aware, it may be said, that Passionate Language and distorted facts will only have the power of creating Momentary warmth, But that permanent opinion must depend wholly upon the real state of the Facts. This is supposing that truth will be sought [sic] by the unhappy Men who form the great Mass of the Population of New South Wales, and assuming that their reason is accessible as their Passions — a fallacious expectation and a presumption which experience contradicts.

The unrestricted Liberty of the Press is now so much insisted on as a Palladium against every abuse, and this doctrine is so universally popular that I feel the utmost apprehension in hazarding opinions which may militate against its Continuance even in New South Wales. But the foregoing considerations, which may be said to result principally from the Penal Character of that Colony, are strengthened, I think, by the circumscribed limits and anomalous description of society there.

Public Officers and Individuals in the higher Ranks are less insulated from the People than elsewhere, and those who become the subject of Newspaper attacks are in immediate contact with the Persons by whom they are assailed, whilst the several Parties are known to the whole Community.

The Press will ever be resorted to as a means of giving vent to spleen, and no one is secure from insult and provocation or is so situated as to be inaccessible to this description of assault, if not by direct scurrility, by innuendoes or inferences impossible to be misunderstood; But which nevertheless may not afford sufficient grounds to justify the adoption of Legal proceedings, altho' they occasion the utmost irritation and annoyance. These feelings are considerably augmented by the conviction that you are personally known and pointed at as the Person alluded to and as the subject of ridicule or perhaps of reproach.

The vulgar rudeness, with which the highest authorities are spoken of and addressed, must have the effect of depreciating them in the opinion of the Public and a strong tendency to bring them into dis-esteem. This result is in some degree

facilitated by the almost familiar intercourse which necessarily exists in so confined a Community, and experience teaches us that such familiarity has ever been found to lessen distinction.

It is therefore more important that Persons in Authority should be protected from the acrimonious invectives to which they are now obnoxious [sic].

The King of Prussia observed 'that no Man is a Hero, in the estimation of his Valet de Chambre' and this quaint remark will serve to illustrate what I am desirous to establish by the foregoing observations.

It may be replied that, if more indignation is expressed than what is really due, the knowledge of the Facts operates immediately to extinguish it, and what is more, to excite an unfavourable opinion of him who had thus displayed his intemperance. But, it is not always easy, or convenient, to expose fallacies of the nature I allude to, and Truth is not found nearer the surface in New South Wales than elsewhere.

The indecent personalities and abusive epithets, applied to the Governor, has [sic] often been the subject of crimination and animadversion, even by the Editors of the opposition Papers, even reproaching the other with being the Author of seditious and Libellous attacks.

They unsparingly upbraid him with the Commission of Arbitrary Acts; the effects of a Military education, and with intemperate interference in matters of Justice; the result of passionate ignorance and a hasty temperament.

But these assertions are in no respect borne out, either by the tenor of his administration, or by the Character of his proceedings. The Records of his Government will refute the one, his deportment in Private life, will serve to Contradict the other, and it is scarcely probable that he should be precipitate only in matters of importance or in Concerns of a Public nature.

That Power vested in the hands of one Person may be capriciously employed no one will deny – But the real abuse of power in New South Wales can never be very formidable and needs not the Control of Hireling News

Writers. Men unrestrained by principle and ready to abandon every honourable motive in their eagerness for pecuniary advantages.

Independent of such Censors, there will always exist the means of bringing a Governor so offending before the great Moral Tribunal of Public Opinion in England; and Individuals will not be wanting, ready enough to employ them.

No anxiety need therefore be felt as to placing obstacles in opposition to the possible exercise of Arbitrary power; while on the other hand, it is essential to the society of New South Wales and to the Maintenance of subordination there that the measures of Government be characterized by vigor and decision – to this end the Administration must be ably supported and the authority of the Governor firmly upheld. If he exercises this authority indiscreetly, or fails to merit the utmost confidence, remove him; for unless he acts with assurance his measures will be tainted with irresolution and timidity, and the sagacity of our modern ‘Romuli’ will not be tardy in discovering the cause, or in taking advantage of its effects.

The NewsPapers would induce a belief that to place certain restrictions on the Press in New South Wales would be a triumph of Power over Public opinion; but this I shall venture unequivocally to contradict; and further to affirm with the utmost confidence that, whatever sentiments may be entertained elsewhere as to the expediency or Policy of measures to this effect, there is no Person of respectability in the Colony who, feeling alarmed at the Power and character of the present Editors of the Public Journals, does not desire the suppression or the curtailment of their means to do him mischief; Or who is not anxious for a surer and a more certain safeguard against malicious and insulting Calumnies than is afforded him by the Law of Libel or by an appeal to our Courts of Justice.

With respect to this assertion, I may claim at all events an equal authority with those who affirm the contrary, and I will add that they alone will be found ready to maintain the propriety of the present unlimited freedom of the Press

whose views are selfish or dishonest and whose principles are corrupt, for Men who mean fairly will be content to act by unequivocal methods.

Besides the foregoing reasons to prove the mischievous tendency of the Sydney Papers, I would instance another.

It is unnecessary to conceal the fact that no Person arrives in the Colony with a view to becoming a settler who does not experience difficulties he is unprepared to encounter, difficulties arising from circumstances peculiar to all new Countries, but particularly felt in New South Wales from the imperfect knowledge of the Colony and the arrear of the survey; as well as from other causes it is needless to enumerate. To whatever extent he may be assisted, sooner or later he will think he has cause of complaint, and that his particular interests have been less considered than their importance merited.

He knows not of the numerous claims similar to his own made by Persons similarly situated, nor would he perhaps measure them by a very just standard if he did so. He is apt to ascribe every little failure in his Plans or perplexity in their accomplishment to needless obstructions or a want of proper Consideration; and such will ever be the case so long as the assistance received from the Government falls short of the often times unreasonable expectations of the Emigrants.

These difficulties, as well as others, occasionally arising from the improvidence of the Parties themselves, engender feelings of disappointment and irritation, not perhaps very clearly perceived or accurately defined as to their cause, and which would be effaced were it not for the tone of the Public Journals, as to the impediments that obstructed their success yielded to industry, or gave way to the facilities, which Persons soon discover, of getting forward in this highly favoured Country. But, the temper of these Papers ministers to the morbid sensibilities of Persons so affected and serves to fasten and augment their discontent. Feelings have been thus engendered which have manifested themselves in insolent and unbecoming communications addressed to the Government and a spirit of uneasiness has been excited in every Class. The

Settlers are persuaded that their wants are unattended to and Maxims of equity are Construed into rigour whilst proper rules of action are regarded as unnecessary restraints; they are unable to perceive that they are unduly influenced by Persons who have made an act of finding in what has naturally a good meaning all the bad meaning, which minds accustomed to false reasoning can discover, and they are disposed to adopt without enquiry opinions which appear to accord and sympathise with their imaginary grievances.

Such being the permanent and irremediable Causes of discontent in New South Wales, it appears to be the more urgent that every adscititious [sic] means of augmenting them should be lessened as much as possible, [sic] As likewise that the utmost Cordiality and union of sentiment should prevail amongst the officers of Government to serve as a Counterpoise to the disaffection engendered by the causes already mentioned.

[end Proctor transcription]

Every Member of the Administration should be known and Confidently relied on, as a firm and certain adherent, and perfect unanimity on their part, would be found, to have the happiest effect, in neutralizing the Political Consequences of the dissatisfaction above alluded to.

In order however, efficiently to establish the *necessary Counter balance* of feelings and principles; and at the same time to add to the stability and *moral* preponderance of the Government, a moral ascendancy must be obtained by its officers: - this can only be acquired by perfect rectitude of Conduct, and by habits essentially and obviously distinct from those of the degraded Classes of which the Community is Chiefly Composed – for it will be found difficult to surpass the Convicts in intelligence or Physical energies; whilst from the Class association I have already adverted to, no Congeniality of tastes or Sentiments will escape detection from the Lynx-eyed scrutiny of those, by whom these Officers are Constantly surrounded –

Good example will do much in correcting the *habits*, if not *the principles*, of the Prisoners, whilst it is likely to have the happiest effect, on the rising generation.

It may be asked, what is to become of the Children of these People, if the views of the Parents are not effaced by impressions, Contrary to those they have imbibed in their Infancy, and if they Continue to hear and see performed, the very same things, as at the age, when they first received these impressions?

It has been remarked, by Persons of most experience, that altho' reformation, undoubtedly takes place in the Conduct of those who have been Prisoners, with the improvement of their Circumstances, and from the absence of temptation; Yet, there is rarely *any amendment in their principles*, and so many proofs are adduced in support of this opinion, that it is a conclusion which must be adopted, however reluctantly. – But, there is no community, I think, more likely to benefit, by the effect of purity of manners in the most elevated Classes, than that of New South Wales; - there is an unusual degree of intelligence and intellect to quicken the discernment of right from wrong; and it has been observed, that a great amendment has already taken place, which it were a pity should be impeded, by the influence of dangerous example, or be retarded by Coolness or a seeming disregard of virtue on the part of those, who have it in their power to give a direction to Public Morals –

Without particularising any one, I may affirm, that the Conduct of some of the Officers of Government, is calculated to serve, rather as an example to deter than to imitate; whilst that of others, which would be neutral, from an absence of the grosser passions, loses its negative quality, by the Countenance they afford, to those of the former description; and in proportion, as these Persons, either from the prominence of their situations, or from the superiority of their attainments are entitled to Consideration, it is to be lamented that they do not, *or Cannot* lend their assistance to the work of moral reformation.

As illustrative of this part of my subject, and as Conveying my own Sentiments, in a far more forcible and elegant manner than I am Capable of rendering them, I would take the liberty of transcribing Opinions expressed by Mr. Burke, with respect to the incapability of Persons, such as I allude to, becoming the instruments of Virtue —

“I am known,” said Mr. Burke, “to have had much experience of Men and manners — in active life, and amidst occupations the most various! From that experience, I now protest — I never knew a Man who was *bad*, fit for a Service that was *good*! There is always some disqualifying ingredient, mixing and spoiling the compound! The Man seems paralytic on that side! His muscles there have lost their very tone and character! They cannot move! In short, the accomplishment of any thing good, is a physical impossibility for such a Man! There is decrepitude, as well as distortion [.] He *could not* if he would, is not more certain, than he *would not*, if he could!”

A temporary cause of irritation has prevailed amongst the Officers of the Government, it may be as well to mention here, and which has arisen from the Reform, it has been necessary to effect, in the arrangements of the several Departments. Many Convenient facilities have been put a stop to, and a routine in business has been established, which was highly requisite, but which is found irksome by those who have hitherto exercised a wide discretion, and who have been in the enjoyment of irresponsible power. Much difficulty has been experienced, in carrying these arrangements into effect, and they have been opposed, or rather they have been *obstructed*, with a jealous, but not un-natural pertinacity; arising from a predilection in favour of the former system.

But this evil will work its own cure, and perfect cordiality will soon be restored, if the minds of the Officers are not poisoned by the mischievous efforts of the Press, or perverted by certain restless and intriguing Members of the Government, who have been busy in their machinations and endeavours to this effect.

With reference to their Proceedings, and if possible, to Counteract their subtle efforts; I would take the liberty of remarking; that, whatever opinion may be entertained, as to the Policy or Impolicy [sic] of Certain points in General Darling's Administration; or of Colonel Arthur's Government, (and I am persuaded, for the most part, their measures have been highly judicious) that Concessions, at this moment, or withholding from these Officers, the necessary support, will be to conform to unfounded Clamour; - to shew that the paths of Honor and *safety* are not the same; and will furnish a most dangerous example.

It will lay the Axe to the Root of all subordination and to Social Union; it will be investing worthless Men with a power of Control, and future Governors may think it prudent to Conciliate these Men – A timid expedient, which will involve the abandonment of every virtuous principle.

It may seem that I express myself on these subjects with un-necessary warmth and unbecoming asperity; and adjustments will be made from the force of my Statements, in proportion, as these feelings appear to prevail; But, if I write intemperately under the influence of impressions induced by the nature of the Evils, I would point out, it proves, at all events, that so far as regards myself, I am correct in my estimate of their *irritating effects*; And however much my opinion may expose me to the charge of exaggeration, they may perhaps claim more attention than they would otherwise merit, by the incautious sincerity, with which they are offered; and as being the result of my own experience.

"A House of Assembly and Taxation by representation" are demanded in New South Wales; but this proposition is so absurd, that little will suffice to shew its futility.

In the first place, Representatives could not be procured.

Persons residing even in Sydney, will not give up their time to the Business of the Public; and the failure of every popular Institution or useful Association, requiring their attendance, may be adduced as a sufficient proof of the accuracy of this assertion.

The Country Districts, would most assuredly be unrepresented; for Settlers cannot leave their Properties, nor would any Consideration induce them to hazard the safety of their Families, or to impede the progress of their undertakings, by procrastinated absences from Home. (Colony currently in drought).

Admitting however, that Individuals *Could* be found, willing to devote their time to Public Business; I presume, that in the House of Assembly, every Class of the Free Inhabitants would be required to be represented. The Emancipists would Consequently obtain a voice in the Legislature; and 'ere long, their influence in Society might become a preponderating one; for many of these Persons are already in affluent circumstances, and few of them want address or intelligence, to effect whatever purposes, their Ambition or their Interests, may suggest, as likely to Conduce to their advantage.

It can hardly be doubted, that these Men would feel a strong bias, in favour of the Convicts; and that the Prisoners would thus obtain a dangerous influence; resulting from the natural sympathy they would Command, from their fellows in Crime and degradation!

The Consequences are too obvious, to require being pointed out!-

But no scheme of Government can happily Conduce to the ends of Government, unless it is adapted to the state of the People, for whose use it is intended; and I cannot think, that those of New South Wales, are yet, in a state to benefit by the Popular Institutions of England.

A departure from the simple Style, in which such statements as the present should be written, may be perhaps excused, if, in this place I quote from Montesquieu – “that the practice of the Freest nation that ever existed, induces me to think, there are cases in which a Veil should be drawn, for a while, over Liberty, as it was customary to veil the Statues of the Gods.”

I am aware that it has been proposed to augment the number of the Legislative Council, to Fifteen or Twenty.

It may therefore be considered presumptuous in me, to notice this subject, or declare my opinion, that some augmentation and further modification of the Council, may be advantageously effected. But, I am desirous to suggest for Consideration, the utility of giving Publicity to the deliberations of this Body, in order, that the stimulant of notoriety, may induce Care and Attention on the part of the Members, and as a means of preventing the obstruction of Public Business, by the obtrusion of undigested or visionary schemes.

As new Laws and Regulations will be Constantly required, such as will be suited to the *particular circumstances* of the Colony, and to meet the emergencies of the moment; the Advisers of Government on these momentous questions, should be men of acknowledged Talent, and the soundest Judgement —

These Laws and Regulations, should be Clear, Complete, well defined and un-ambiguous.

So much as possible, each Punishment should be derived from the particular nature of the Crime; - there then would be no excuse for Arbitrary decisions — the punishments would not flow from the Capriciousness of the Judges, or Magistrates, but from the nature of the offense; and the Judges, the Attorney and Solicitor Generals, should be Persons (the two latter, at all events) on whom reliance could be placed, to frame them; as well as to watch over their effect — to supply deficiencies, and remedy what may be found inexpedient in practice. For useless Laws debilitate such as are necessary; And those which may be easily eluded, weaken the Legislature.

The Government and the Public, should look to the Officers above mentioned, as the Guardians and Protectors of their respective Rights; and as the wise projectors of Laws, having reference to the pressing and prospective Interests of the Community. In proportion as the Talents and influence of these Gentlemen are important, as they become dangerous, if employed, either as instruments of Popular Clamour, or of usurpation in the hands of Power —

They should stand opposed, alike, to the turbulence and licentiousness of Faction and to the encroachments of Authority // - [sic] As Laws are said to be always tainted, more or less, with the passions and prejudices of the Legislators, it is essential that their characters should be such, as to *guarantee* the purity of all enactments prepared by them. But, under the novel circumstances of Legislating for a Community, Composed as that of New South Wales: it might not be amiss to advert to the practice of Ancient Rome and Athens – where the decrees of the Senate, had the force of Law, for the space of a Year, but did not become permanent, until further ratification. Some trial of a Law might perhaps be advantageously made, before it is finally adopted – But on this subject, I write with the utmost diffidence.

It is likewise, I think, worthy of consideration; Whether it may not be possible to adopt some statistary mode, by which the Government can be made acquainted with Local necessities and Interests of the several districts of the extensive Colony of Australia –

The number of Magistrates has of late been Considerably increased, and may perhaps, admit of further augmentation, and I would submit, that Three or Five Magistrates, in each District, according to circumstances, be nominated by the Members of their own Body, to frame a Periodical Report, on the various subjects of Interest, within their Knowledge, agreeably to a Plan, which it may be as well to point out for their guidance-

These Reports, may be of a Statistical nature, and will serve as useful; on which important calculations can be founded, as well as furnish the best and most accurate information, as to the views and wants of the distant Settlers.

Whatever objections may be thought to exist to this Plan; it is at all events, more *practicable*, than the proposed “House of Assembly”, whilst it embraces some of the objects of Representation.

I have considered it better not to encumber these “Reflexions” with my details of the circumstances, on which they are generally based, but I am in

possession of ample proofs, that they are not without foundation; and I have endeavoured to arrange these proofs, in such a manner, as to afford facility of reference, should the matters to which they relate, be thought worthy of attention.

H. Dumaresq

Lt. Col.

London

6th November 1827

Source:

Colonial Office correspondence, Letters from Individuals A-E, CO 201/187

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